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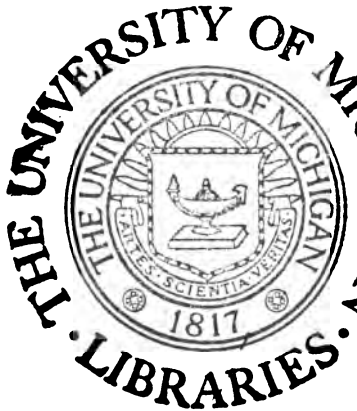
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HANDY BOOK

OF

FARM TENURE & PURCHASE

UNDER THE

Landlord and Tenant (Ireland) Act, 1870.

WITH THE AMENDING ACTS, RULES, FORMS, AND INDEX,

By HENRY DIX HUTTON,
BARRISTER-AT-LAW.

Third Edition.

"One of the greatest mischiefs in Ireland, I think, is that it seems to be taken for granted that MAN is a nuisance."—*O'Connell.*

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PREFACE TO THE THIRD EDITION.

In this, the Third Edition, I have endeavoured to render my exposition of the Land Act of 1870 still more correct and complete. In the present Preface I propose to review the main questions raised for judicial consideration under its provisions, and the decisions come to upon them. I shall also offer some remarks on the conclusions thus arrived at, and the more important points still *sub judice*.

The experience of two years justifies, I think, the opinion expressed in the first edition of this book, that the Act of 1870, although not a settlement of, was a great advance towards settling the Irish land question. It rests upon principles which are sufficiently in harmony with Irish history and circumstances, and only need to be carried out in a just and courageous manner to the whole of Ireland.

No Act passed in modern times has given so large a scope for the exercise of judicial discretion in its application. The difficulty of construing it has been enhanced by the novelty of the subject, by the defects of the legislation, and by the imperfection of the language.

The result of this agrarian enactment must, therefore, largely depend on the decisions of the Chairmen of Quarter Sessions, and of the Judges of Assize on appeal, and in the last resort, on the judgments on cases reserved for the legal opinion of the superior judges who constitute the Court for Land Cases Reserved. Of the latter only one as yet exists,* but the two former classes are sufficiently numerous to warrant a review of them, in order to appreciate their general results and the divergencies of opinion on important points.

* Holt v. Lord Harberton, 6 Ir. L. T 1. I have collected (below, p. civ) the reports of decisions so far as these are given in the *Irish Law Times*. In the text I have referred to some cases which as yet have only been reported in the newspapers.

THE ULSTER TENANT-RIGHT.

To begin with the Ulster tenant-right, two essential questions have been discussed—one affecting the nature of the custom as legalized by the Act, the other as to the tenancies intended to be embraced under its provisions.

WHAT IS THE ULSTER TENANT-RIGHT?

The first of these questions may be stated as follows:—Is the Ulster tenant-right custom, which the Act declares to be legal, an ancient and general custom extending over the entire province, or does it merely mean special usages, often of recent date, and only extending over particular estates?*

A case (Austin v. Scott, Q.S., 5 Ir. L. T. 172, S. C. A. ib. 173) which might have thrown some light on this question, was entered for hearing before the Court for Land Cases Reserved, but it has not yet been heard. The only judicial light, therefore, thrown upon the point must be sought in the cases at Quarter Sessions, and a small number of appeals at the Assizes.

Among these some will be found which tend to establish the former view, while others lean towards the latter. It might be expected that considerable divergencies would arise from the multiplicity of tribunals. But apart from such individual differences of judgment, the variety in judicial decisions may, I conceive, be mainly traced to the language of the Land Act itself.

The first section *declares* to be legal "the usages *prevalent* in the *province* of Ulster, which are *known as*, and in the Act intended to be included under the denomination of, the Ulster tenant-right custom." The second section, as regards any holding not situate within the *province* of Ulster, legalizes "a

* The Report of Lord Lifford's Committee notices this difficulty in the working of the Act, so far as relates to the *area* of proof ("whether the Ulster usage is to be determined by the practice of the estate or by that of a larger area"), but it does not notice the other difficulty as to the *time* of the proof—whether the ancient practice or modern limitations should prevail. This last point was specially raised by the case reserved on Austin v. Scott, 5 Ir. L. T., 173. To some extent the two questions coincide, but they are distinct, and should be kept so.

usage which it shall appear prevails, which *in all essential particulars* corresponds with the Ulster tenant-right custom." Taking these two clauses together, and looking at the words marked in italics, the Act seems clearly to point to the legalization of an ancient custom extending over that entire province, liable to variation in secondary matters, but not liable to be abrogated or essentially curtailed by the mere act of the landlord.

Unfortunately, the second half of the first section somewhat conflicts with the view thus suggested, and certainly throws serious difficulties in the way of its application. It obliges the claimant to *prove* that the particular holding in respect of which the claim is made, falls under the custom. That such proof should be required out of Ulster is intelligible, but within that province it is notorious that the custom prevails, and the just course would, I conceive, have been to presume the applicability of the general custom of Ulster, leaving the landlord to establish the existence of any modification not inconsistent with it. The legislature has not taken this course, and hence the local circumstances and estate usages have been in some cases allowed to govern the claim. In other cases the difficulty of proving a usage has obliged the Ulster tenant to fall back upon his claim (if any) for disturbance and improvements. Lastly, the refusal to allow the claim to be made in the alternative under the custom, or under the third and fourth sections, has induced claimants in several cases to abandon the former, and rely on the latter.*

In the absence, therefore, of any guiding principle or judicial decisions of general application, I can only call attention to some of the more important expressions of judicial opinion in reference to Ulster tenant-right, and offer such observations as they suggest to my mind.

Among judicial commentaries on the nature and proof of Ulster tenant-right, the most elaborate which I have met with is that recently pronounced by the Chairman of Quarter Sessions for the County of Fermanagh (Patrick Joseph Blake,

* The report of Lord Lifford's Committee notices this difficulty in the working of the Act. The decisions of the Chairmen on the point conflict. (See below, pp. civ, cxiv.)

Q.C.) The most important portions of this judgment are as follows (*Enniskillen Advertiser*, 4th July, 1872):—

Jolly v. Archdale, and Kerrigan v. Archdale.

"The Chairman, on taking his seat, said he had some observations to make as to the grounds on which he had, the previous evening, given his decision in the cases in which Jolly and Kerrigan were the claimants, and Captain Archdale the respondent. He thought that in those cases where claims were sought to be established under the Ulster tenant-right custom, he himself and the other chairmen in the northern counties should be most careful in giving decisions on the existence and varieties of that tenant-right custom on the different properties, inasmuch as they were, to a very considerable extent, making the law. The grounds upon which he decided those cases were these:—He considered that the evidence established the existence of tenant-right upon the Archdale property; and, indeed, he might say that he himself had judicial knowledge of the existence of that. He had very good grounds, exclusive of this evidence, for believing it existed; and though the agent, N. M. Archdale, seemed exceedingly anxious to abolish it—though he certainly seemed anxious to abolish or narrow it—he did not succeed in doing so. He (the Chairman) therefore thought he was bound to hold that tenant-right existed on the estate, and that being the case, how did matters stand? What would have induced those parties who had sold, having leases, to have communicated with the landlord and his agent? They were as much owners under that lease as was his friend Mr. Collum, who had sold his house to the clergymen here, most likely without consulting Lord Enniskillen at all on the matter. They wanted, of course, to know if, on the fall of the lease, they would be treated as the tenants from year to year who enjoyed tenant-right.

"It was his first duty in such a case to ascertain and enquire whether, as a matter of fact, any kind of tenant-right did exist on the particular property, and that he had not the privilege, nor did the new land law seek the privilege, of establishing or recommending any new custom or usage, but merely to give the force of law to those already in existence. Now, he found transactions taking place on the property in question, that could only be explained on the hypothesis that tenant-right did exist. Then, the tenant-right being proved to exist, WHAT ARE THE CHARACTERISTICS OF TENANT-RIGHT? One is that the tenant shall remain in possession whether he holds under a lease or holds without a lease, subject, on the fall of the lease,

to a reasonable revision of the rent ; and subject, where there is no lease, to a periodical revision of the rent on a *periodical* revision. The tenant is to continue in possession in that way ; and that he took to be tenant-right. He believed that tenant-right originated in the peopling of this province at a certain period ; and also believed that just as the landlord got *his* grant of the forfeited lands, taken from the original proprietor or chieftain on account of his disloyalty, so the imported tenants got *their* rights to remain on the lands, under the circumstances he had mentioned, the rent being, at terms of from twenty to thirty years, periodically revised. Then the first stage of tenant-right was simply that the tenant *himself* remained in possession, and so remained subject to a reasonable and periodical increase of the rent. The next phase of tenant-right is : Suppose the tenant does not remain in possession, and that he is parting with his interest in the property by transfer or assignment, that he (the tenant) should be at liberty to do so according to his own pleasure ; but that, at the same time, the landlord should have his right of veto—that the landlord should have the right to say, "I won't accept of that man," and that he can continue to say so as long as there is any reasonable objection against the character, solvency, etc., of the person to whom the tenant proposes to transfer his interest. That veto of the landlord does by no means amount to saying, "I won't let you sell at all." This second stage of tenant-right was exactly this, that the tenant should have the liberty of substituting for himself another person equally good in the farm.

"In connection with this part of the custom was the question of the price to be paid by the tenant, if there was a sale of land from the old tenant to a new one, with the concurrence of the landlord ; and it is this point of the question that causes an apparent variation in the tenant-right on various properties. The outgoing tenant pockets the price, which was differently regulated in different districts. On some estates the landlord fixed the price, on some estates the price was limited to a certain number of years' purchase, and on others the tenant who wished to part with the land could sell it by public auction. All these apparent differences are not, to speak in the language of logicians, the essential attributes of the custom—they are merely the accidents of it ; and wherever any of these regulations have been permanently established on the estates, he (the Chairman) would say they were absolutely binding.

"Thus, on Sir Victor Brooke's estate (referring to Noble's case at Newtownbutler March Sessions), a man came in as the assignee of a former tenant. He had bought in spite of the landlord and

agent, and contrary to the known fixed rules of the estate. He (the Chairman) had dismissed the claim. That having been done, and Mr. Sankey, the agent, having, so to speak, asserted the dignity of the rules of the estate, he (Mr. Sankey) very properly and judiciously went out of the court with the tenant; and in some private arrangement the man was very generously recouped, to a great extent, in the capital he had imprudently expended. He (the Chairman) maintained these rules where they were established, and looked upon them as the characteristics of the tenant-right existing in any particular estates.

"The next stage of the question is arrived at when we suppose a case where the old tenant is not remaining in possession, and where he is not selling, but that the landlord is taking the land to himself. If the landlord takes the land himself, there is a question of law, whether they (the chairmen of quarter sessions) have authority to make the landlord pay the purchase money for coming into possession—whether there is no injunction restraining them from so doing. There is no difficulty when the tenant is about to sell to an incoming tenant; but there are men who entertain grave and strong doubts as to whether they (the chairmen) should say to the landlord, "You must become a purchaser." There is something very harsh, and even unjust, in that.

"It brings the landlord, a man of intelligence, and one who understands and is greatly affected by fluctuation in the prices of land according to circumstances, into competition with men who never think of anything but the present. Men like the landlords understand, for instance, how land rose to such a price during the French war, and the prosperous condition of the country, so that some years after it would not bring one-third of the money. The landlord is almost always a man of education, foresight, and intelligence, and he understands this; but, if forced to buy in the way referred to, they are brought into competition with men who seem to be affected with what he might term the wild fury for land so prevalent at present. His (the Chairman's) own impression was that there has been, in many counties, a considerable amount of indiscretion in the way the operation of this Land Act has been forced on by the land-owners themselves. The litigation, generally, in all the land courts, has been the act of the landlord. If the tenant is not disturbed he has no claim, and every land claim has been founded on an ejectment. His (the Chairman's) own opinion was, that it is rash and imprudent to bring these ejectments, and that to commence now, when the prices are so unreasonably high, is more injurious to the owners themselves than to any one else. He thought it would be much better for a landlord

who had reason to wish himself rid of tenants to wait till things have become more quiescent.

"He had now shown the three phases of tenant-right, and he might mention that when a landlord puts a tenant out of possession, and purchases the holding himself—as in the case of Jolly and Archdale, or Kerrigan and Archdale—the tenant-right then, as regards that piece of land, is utterly extinguished. No claim under any custom of tenant-right can ever be made against that portion of the land again. The landlord, having so purchased, comes under the proviso contained in these words of the provisions of the Act (read first section of the Land Act), that, "where the landlord has purchased or shall hereafter purchase or acquire from the tenant the Ulster tenant-right custom to which his holding is subject, such holding shall thenceforth cease to be subject to that Ulster tenant-right custom." Therefore, every landlord who is now obliged to pay the purchase money—the same purchase as an incoming solvent tenant would pay—gets the benefit of having the whole usage that formerly existed as regards that holding finally extinguished and for ever abolished. Any future tenant will then have no right to claim anything except under sections 3 and 4 of the Land Act. Claims of the latter kind were not nearly so good as the tenant-right custom or usage."

Mr. Blake has, justly I think, given prominence to the tenants'. customary claim to continue in possession at a fair rent, as the primary feature of Ulster tenant-right, and that from which all the rest flow. It appears to me, however, that as a logical deduction from this position, confirmed by the general understanding and practice of the Northern province, the tenants' claims, under the second and third heads noticed by the Chairman, stand on a higher ground than he is willing to allow to them. I submit that serious qualifications are necessary before we can accept the proposition, that "wherever estate regulations have been permanently established on the estate, they are absolutely binding." I grant that cases may exist where such estate-rules might, under the Act, rightly be held binding on the tenant. For example: if it appeared in proof that he came in *since* they were established, *and* had, in terms, or by his acts, assented to them as regulating his tenancy. But I contend, that in the absence of such proof the presumption is against the binding force of estate-rules, so far as these are inconsistent with, and limit or

abrogate the general tenant-right of Ulster. There is no principle better settled by the English decisions on agricultural usages than this, that the *status* of the outgoing tenant is regulated by the position he occupied as an incoming tenant. (See *Dixon on the Law of the Farm*). The landlord may disapprove of the usages, and wish to abolish or modify them, but when the law has sanctioned them, he can only do so by indemnifying the tenant in respect of the money he paid when entering the farm, or by making with him or an incoming tenant a precise agreement regulating the new terms of tenancy. He clearly cannot alter the terms of a subsisting tenancy merely by promulgating new regulations. The applicability of the view here submitted to the Ulster custom derives some confirmation from the decision in the important case of Friel v. Lord Leitrim (Q. S., 5 Ir. L. T. 187; S. C. A., Ir. L. T. 86). The facts of that case are shortly stated below (p. cvi). The judgment of the judge in appeal, Mr. Justice Lawson, was as follows :—

"His Lordship, in delivering judgment, said—I don't entertain any doubt whatever about this case. The only question I have to try is whether this holding is proved to be subject to the Ulster tenant-right custom. It has been proved to my satisfaction by Mr. Read, a very respectable gentleman, that the tenant-right custom exists, and is recognised on the adjoining estates, and it has been proved, and I think it is perfectly clear, to my satisfaction, that this particular estate was also one on which this Ulster tenant-right custom prevailed. I think it is perfectly clear that until the time of the present Earl, this custom prevailed. The tenants got liberty to sell, and a new tenant got possession, subject to the approval of the office, and of course the office had a right to be satisfied with the incoming tenant, so as to prevent an improper person getting into possession of the property on the estate. And here I find that Hugh Friel himself, in pursuance of the custom with the agent's approval, paid of his own money £180 for the interest of a tenant in a portion of the farm lately held by him. That was done with the approval of the gentleman who acted as agent for the time being, and I would require to hear evidence different from what I have heard here to satisfy me that this holding, which was once subject to that custom, has since ceased to be subject to that custom. I would understand it if Lord Leitrim, after he succeeded to the estate in 1855, gave notice to every tenant on the estate that he would abrogate the

custom of the estate. If he had done that I would reserve a point—whether it was in the power of the landlord to abrogate the custom by giving notice to the tenants that the custom would not be allowed to prevail any longer. As it is, I think this holding has been proved to be subject to the Ulster tenant-right custom, and I am of opinion that Lord Leitrim has not given me evidence that that custom has ceased to apply to it. Lord Leitrim says he has not allowed sales to take place on his property. He tells me that the Misses Allan were not allowed to sell, and, in a great many instances, he states that he refused to permit sales taking place; but that in my mind, is not a distinct notice to the tenants who held their respective holdings subject to this tenant-right custom. His refusal, in my opinion, was not a general notice to the tenants that in future the rights under the custom would be taken from them. Therefore, in this case, I am of opinion that the tenant-right custom prevails and continues, and on that ground I decide in accordance with the decision of the Chairman, and award the claimant £250, which sum I consider moderate and reasonable."

It will be observed, however, that the learned judge who sat in appeal rested his decision on the want of evidence to prove the issuing by the landlord of a rule abrogating or altering the custom which originally subsisted. The question as to the effect of such a rule if brought home to the knowledge of the tenant, has not been finally decided, though the point was reserved in Austin v. Scott (5 Ir. L. T. 173), for consideration by the highest Court of Appeal. The anxiety which the Ulster tenants feel on the subject is clearly expressed in the following resolution adopted at a public meeting of the "County Tyrone Tenants' Protection and Land Law Reform Association, held at Dunamanagh, on the 5th March, 1872:—

"That we regard the ancient and unrestricted tenant-right of Ulster as the basis of the prosperity of the province, and founded on justice, and we regard with dismay the decisions under the Act which go to legalize the office rules as being contrary to the express declaration of Mr. Gladstone, and against the interests of the tenants, of the good landlords, and of the country generally."

Another question in connection with these estate-rules deserves more consideration than it seems to have received; namely, how far they are reasonable and consistent with the usages *prevalent* in the province, and *known as* the custom of

Ulster. Some limitations may be so; others not. For example, a usage that the other tenants on the same estate should have a prior right of purchase might be deemed reasonable and valid. It harmonizes with the landlord's admitted customary right to object, on just grounds, to a proposed incoming tenant. On the other hand, the validity of arbitrary limitations of the selling price may justly be questioned. No doubt the tenant cannot claim an absolute right to sell to the highest bidder; for, even supposing him to be unobjectionable, it is conceded that the landlord is entitled to a fair increase of rent, where the value of the property has risen from general causes, irrespective of improvements effected by the tenant. This right of the landlord must manifestly affect the price offered by an incoming tenant. But when, for example, the selling price is limited to a certain number of years' purchase, or a definite sum per acre, it is obvious that such a rule is unjust and impolitic, because it places on the same level the improving and the unimproving tenant. I submit, therefore, that this and similar limitations should be rejected as being inconsistent with the genuine usages *prevalent* in the *province* of Ulster, and *known as* the Ulster tenant-right custom.

As regards the third aspect of the Ulster custom, noticed by Mr. Blake, it seems to me that the tenant's possessory interest being once conceded, the landlord who resumes possession may reasonably be required to pay the ordinary selling price. If the tenant evicted is unsatisfactory, the incoming tenant will reimburse the landlord's outlay. If the landlord wishes to abolish the custom, he must, as settled in such cases by the law of England, acquire the right to do so by buying out the subsisting tenant-right. If the proprietor wants the land for his own advantage—for example, to enlarge his demesne or as building land, it seems still more reasonable that the tenant should not be the sufferer for a change in his condition imposed without his default, and against his wish. The hardship alluded to as to the rate of purchase money is, I am inclined to believe, greatly overrated. Landlords themselves do not hesitate to give what, commercially speaking, must be considered "extravagant prices," merely to acquire a territorial status and the social advantages incident to landed proprietorship. Much less should we blame the farmer who

is anxious, perhaps, to preserve his ancestral home and holding, or to invest his savings in agricultural industry. Nevertheless, for the reasons stated hereafter, I believe that the prices given for Ulster tenant-right are even higher than they seem to be when estimated according to an economical standard which is theoretically erroneous and practically misleading.

To what Tenancies does the Ulster Custom Extend?

The Report of Lord Lifford's Committee notices this difficulty in the working of the Act: "Whether, at the expiration of a lease, the Ulster custom is to prevail over the covenant and surrender in the lease?"

The question thus raised is one of the greatest importance. The judicial decisions both at Quarter Sessions and on appeal at the Assizes, are conflicting.—(See below, p. cv). The point has been reserved for judgment by the Judge (Mr. Justice Barry), who heard several land appeals at the late Assizes for Downpatrick.—(Menown v. Beauclerk, Wallace v. M'Clelland, and Johnston v. Torrens).

In one of these cases, as in a case decided in another county (Allison v. Mansfield, Q.S., 6 Ir. L. T. 37, affirmed at the Assizes), the difficulty arose whether the Ulster custom was *proved* to extend to leases in respect of the claimant's holding. As before observed (p. 9), this difficulty is raised by the language of the Act which, instead of creating a general presumption in favour of the provincial custom, throws the burden of proof on the tenant, and leaves it doubtful "whether the Ulster usage is to be determined by the practice of the estate or by that of a larger area."* The evidence given before the Devon Commission (Report and Evidence, Parl. Papers, 1845,) went strongly to show that the custom applied equally to tenancies at will and to leaseholds. After the lapse of a quarter of a century, we find that, generally speaking, the same state of things prevails throughout the Northern province.—(See the Reports from Poor Law Inspectors in Ireland as to the existing relations between Landlord and Tenant, 1870—particu-

* Report of Lord Lifford's Committee.

larly those of Mr. R. Hamilton, Dr. Brodie, Mr. O'Brien, and Dr. Knox, pp. 12, 36, 102, 143). This is important, because the difficulties of proof may be considerably diminished if the Courts take a liberal view, and allow the usage as to leases to be decided by evidence of the practice over a large area.

The following remarks by the Chairman of Quarter Sessions for the County of Fermanagh, on this head, are deserving of a careful consideration (see before, p. 9) :

Graham v. Lord Erne.

"The Chairman said the case was one of those which involved this difficult question of TENANT-RIGHT ON THE EXPIRATION OF A LEASE, a question that must be settled by the practice of the land courts.

"In order to establish the existence of tenant-right as to lands held under lease, it is not sufficient, in my mind, to establish that tenant-right was recognised in holdings held from year to year. At all events, I am doubtful that it is sufficient; and a large number of chairmen are of the same opinion. You might prove on an estate that a tenant-right was recognised in relation to tenants who occupied from year to year; and yet, that might fail to carry out the fact that tenant-right was recognised in premises held under a lease. It is to be ascertained whether the acceptance of the lease was not intended to operate as a measure putting an end to tenant-right of the holding. We are to enquire into the nature of tenant-right as a question of fact, as I read yesterday from Mr. Gladstone's speech in bringing forward the Land Bill. I am not using his words as an authority on what tenant-right is, but as what I consider to be the true exposition of the Act of Parliament, and the intention of the legislature in passing it. The words are as follows (or to this effect :—

"'Viewing it as a covenant, we propose to take it as it is, to convert it into law, and allow it to be examined into as a question of fact by the Courts constituted under this Bill.'

"That is, we have to consider, first, as a question of fact, did tenant-right exist on the property; secondly, if we find it did exist, we have to determine what the nature of that tenant-right was.

"Now, it might be that there was a tenant-right on the property; and it might be, in its nature, a tenant-right affecting only tenancies from year to year. It might also, in another case, affect tenants holding under leases—coming into effect on the expiration of their leases. How are both these facts to be deter-

mined but by the dealings between the landlord and his agent on the one side and the tenant on the other?

"If I find in the case of a tenancy from year—but, before coming to this, let me observe (and I think this is a matter of some importance), that the root and primary meaning of tenant-right is not that it consists in selling—in letting the tenant sell. Its real object in my opinion, is the leaving of the tenants in possession of their holdings. I think it originated in a design that, as the landlord was to continue the owner in fee, and was to be entitled to the rent, so, in like manner, that the tenant should continue the occupier, he and his descendants, and that they should not be displaced at will. I believe it originated in a desire to effect this primary object. The *law* gave the landlord the power of putting out, raising the rents, and of leaving the tenant in possession: but the meaning of *tenant-right*, as regards tenancies from year to year was that of curbing the arbitrary power of the landlord with reference to eviction and the increasing of the rent; and the real object of this curbing of the landlord was in order that the tenant might continue the occupant of the land as long as he liked, provided he discharged the duties on his side of the covenant; and, therefore, it was only as a means of effecting that primary object, that the landlord was prohibited from increasing the rent unreasonably, or from bringing ejectments and evictions. I said *prohibited;* perhaps I should not, for all those occupying under the old tenant-right custom had no means of enforcing it but by public opinion. If the landlord chose to set at defiance this public opinion, a proceeding which would have placed him in danger in some parts of the province at certain periods, or if all the landlords had agreed in refusing, they might have abolished it—but the protection the tenant had in some cases was the kindly feeling between different ranks, between landlords and occupiers, and a sort of terrorism restrained the landlords in other districts.

"Well, now, tenant-right being thus in existence, it might be confined to tenancies from year to year; on the other hand, it might be recognised even in relation to a tenant holding under a lease. It might extend to this kind of holding; for the recognition of tenant-right, even on yearly tenancies, is, to a certain extent, antagonistic to the legal rights of the landlord; so, therefore, it might possibly be the usage on an estate for the landlord to acknowledge antagonistic rights on lands held by lease; that is antagonistic to his *legal* rights. For instance, let me put an extreme case. If I found an estate of 1,000 acres or so, every inch of it under lease, and every inch of it dealt with in exactly the same manner, between the landlord and his agent on the one

side and the tenant on the other, as premises situated on another estate, where there were only tenants holding from year to year —would it not be a reasonable thing for me to conclude that a similar tenant-right was, as a matter of fact, in existence on one estate if it prevailed on the other? And then, whether the occupier is a tenant from year to year or a leaseholder, his existing rights being antagonistic to the legal rights of the landlord, there is nothing to prevent usage from establishing these antagonistic rights under leases, just as on yearly tenancies. So the question of the existence of tenant-right is a question of fact to be determined by how the landlord and agent on one side and the tenant on the other act towards each other.

"In cases of tenancies from year to year, the usual course to show tenant-right is this—to show that tenants were never evicted, and to show that their rents were periodically raised every 20, 25, or 30 years, according to the increased value of the lands—according as their value is increased by more roads, facilities of transit, increase of produce and the like; but not by reason of improvements, new buildings, drainage, and fences. This absence of evictions, and the periodical valuation of the land, afford one kind of evidence to show the existence of tenant-right.

"It was, I believe, from this right to remain in the possession of the lands that arose this other part of the usage, viz.: the right to sell to another party, if the tenant could not or did not want to continue in possession.

"Suppose a man was not able to hold it, or suppose he holds only 20 acres here, and that he is left, by bequest, a property of 200 acres in another county, he may desire to give up his land. From many motives he might wish to dispose of his interest to another party. In other cases, where a man was about to be evicted for non-payment of rent, even in that case, tenant-right was on many estates recognised; and, if the tenants were allowed to sell in such instances, it would be evidence of tenant-right.

"Now, if I find there were dealings of a similar character; if I find that on the expiration of a lease it was the constant practice of the estate that the tenant should remain at the reasonable rent—not at the rack-rent; if I find a re-valuation made periodically, or that re-valuations were made of the lands held under lease, as well as of those held from year to year—and this kind of re-valuation has occurred very frequently in Down, Antrim, and some other places, though, I think, not in this county; and, lastly, if I find that the tenants holding by lease, when about to sell, were in the habit of consulting the landlord or his agent, and of allowing the landlord and his agent a voice in the selection of the person to whom an assignment is to be made, I would look

upon all these circumstances as evidence to satisfy me of the existence of tenant-right, and to convince me that the landlord looked upon the tenant, as regarded his being left in possession after the lease, as in the same condition as a tenant from year to year who enjoyed tenant-right. All these conditions must be proved as matters of fact."

But, supposing the claimant to have established that the Ulster custom applied to his leasehold farm, the question has been raised whether the ordinary covenant to surrender the premises at the expiration of the term excludes the customary right. This point will, no doubt, ultimately come before the Court for Land Cases Reserved. I beg to submit some of the chief reasons which make me believe that the covenant ought *not* to be held to exclude the custom.

Even if there were an inconsistency between the covenant and the custom, I submit that the latter should prevail.

The Act deals with the Ulster usages as subsisting *facts*. It seems unreasonable and absurd that the claimant should be required by the Act to *prove* the existence of the custom in reference to his lease, which he is then told by its nature excludes the custom. Such a view would be alike inconsistent with the testimony above noticed (p. 17), and the scope of the legislature. The spirit and frame of the Act of 1870 are directly at variance with the argument that a contract for a definite term must, *per se*, exclude all interest in the tenant beyond the benefit thus conferred,* Even the non-customary tenant, though holding under a lease for thirty-one years and upwards, may claim for building and reclamation. In several other enactments the Act impliedly declares that the tenant's claims are not under all circumstances to be deemed satisfied by a leasehold interest, even where the contract is made after the passing of the Act.—(Sec. 3, proviso 3; and sec. 7, the proviso. The Act has retrospectively abrogated certain contracts in favour of the non-customary tenant (secs. 3 and 4). I contend that it has impliedly done the same thing by declaring the Ulster tenant-right custom to be legal.

* It is not unimportant, historically, to observe that the general motive for granting agricultural leases in former times in Ireland was a political one—that of creating votes. The old leases were in no sense commercial contracts.

In the second place, I submit there is no legal contradiction between the Ulster custom and the ordinary covenant to surrender in a lease.

The customary law of England as to way-going crops is entirely favourable to this view. In Wigglesworth v. Dallison (1 *Smith's Leading Cases*, 6th Ed., p. 589), which established this doctrine, the tenancy was leasehold. The lease, which must have contained the ordinary covenant to yield up the premises at the end of the term, was held not to be inconsistent with the tenant's customary claim for the way-going crop. This decision is the more remarkable because the outgoing tenant who sows the crop has a continuing interest amounting to "possession, and not merely to an easement."—(See *Broom's Maxims*, 4th Ed., p. 467, and the cases cited there). I would further observe that the mercantile decisions on customary law lean strongly to support usages *proved to exist*, even where they seem to conflict with the written contract. The principle is laid down as follows:—"To fall within the exception of repugnancy, the incident (added by the usage) must be such as if, *expressed in the written contract*, would make it insensible or inconsistent."—(Dale v. Humphrey, 7 E. & B., 266. S. C. in error, E. B. & E., 1004).

Tested by this rule, can it be said that the Ulster usage is incompatible with the ordinary covenant in a lease? If that usage constituted a claim to continue in possession absolutely, no doubt there would be an inconsistency; but this is not the case. The Ulster tenant-right is essentially a claim to a qualified possessory interest in the premises, which is consistent with the landlord's proprietary dominion, and may, without any contradiction, be incorporated with the covenant to surrender.

On these grounds, I submit that the Ulster usages are not excluded by a lease containing the ordinary covenant to surrender the premises and improvements at the expiration thereof.

Soon after the passing of the Land Act, the contemplated sale in the Landed Estates Court of the northern estate of the Marquis of Waterford, raised the question whether the parliamentary conveyance would have the effect of destroying the claims of tenants under the Ulster custom, unless these were specified or referred to therein. The arguments and

judgments that took place in the course of this celebrated litigation (In re Estate of the Marquis of Waterford, Irish Reports, Equity, vol. 5, p. 59, and on appeal, ib. p. 434), may still be usefully consulted as sources of information or speculation about the general nature of the customary tenant-right characteristic of the Northern province. But the question at issue has been set at rest by the 34th and 35th Vict. c. 92 (21st August, 1871), which saves the rights, past and prospective, of Ulster tenants, and renders unnecessary any mention of them in the conveyance of the Landed Estates Court.

The purchase of the Ulster tenants' customary claims under section 1, clearly prevents the custom from afterwards attaching to that holding. But it seems doubtful whether, and to what extent, the same result follows when the landlord has simply resumed possession. The question has been recently raised in the case of Williamson v. Lord Antrim, on appeal at the Summer Assizes for the County Antrim. The facts were shortly these* : —

"It appeared that the lands in question which are small in extent (though the principle involved is of much importance) are 'town parks' in the immediate vicinity of Ballymoney. Lord Antrim, who had immediately before held them in his own hands for grazing purposes for about eighteen months, let them in 1832, at a rent of £22 a-year, to Williamson's grandfather, as tenant from year to year, the latter paying no fine or premium of any kind. The plaintiff, Williamson (who came into possession of them on his father's death in 1865), carried on the business of a pork merchant in Ballymoney, and having failed in his trade, he assigned his interest in the premises, for the benefit of his creditors, to trustees who were named as his co-appellants in the present case. These trustees sold the interest in the lands by public auction in January last to two solvent parties, whom Lord Antrim refused to accept as tenants, whereupon a claim for £75, the alleged value of the tenant-right, was lodged. As against this, the respondent claimed, besides alleging the tenant-right was extinguished, a set-off of £22 for one year's rent of the holding up to 1st November, 1871.

"The learned Chairman had dismissed the tenant's claim with costs. The Judge of Assize reserved his judgment."

* Reported in *Saunders' Newsletter*, 14th August, 1872.

The report of Lord Lifford's Committee notices a further difficulty in the construction of the Land Act—"whether the sections 9, 10, 14, and the whole of section 18, apply to holdings affected by the usages of Ulster." The same difficulty has been raised in reference to sec. 15, sub-sec. 1, as regards town-parks.*

I find the following passage in the draft report submitted to the Committee by two of its members (the Earl of Belmore and Viscount Lifford):—

"That it was the intention of the legislature that all these clauses should apply to Ulster as to the rest of Ireland, is in the recollection of your Lordships, even if it were not shown by statements in the House of Commons and in this House, made by the Attorney-General, Sir Roundell Palmer, and the Earl Granville. This doubtful state of the law has encouraged extravagant expectations on the part of the tenants in some parts, especially in the north of Ireland."

If this statement be correct (and it should be observed the Committee declined to adopt it), the legislature must have intended not to extend the Ulster custom in substance to the the rest of Ireland, but to cut down the customary right, and to abrogate its most reasonable and wisest characteristics. When was it ever known or asserted that an Ulster farmer forfeited his tenant-right by falling into arrears of rent, or that his creditors were deprived of their fair claims in case of his bankruptcy or insolvency? A few landlords in the Northern province may have imposed such conditions, but they did so in defiance and violation of the custom. This view, I submit, goes far to establish that the above provisions in abridgement of the tenant's claims operate only on those made outside of the custom. The language of the sections in question (especially sections 9, 10, 14, 15, 16†), compared with those which directly concern the Ulster tenant-right, harmonises with and supports this view. The customary claim is declared to be legal, and is treated as a

* Williamson v. Lord Antrim, Land Appeal, Summer Assizes, Co. Antrim, reported in *Saunders' Newsletter*, 14th August, 1872. Judgment reserved.—(See before. p. 24).

† The language of section 13, which is a provision *in pari materia* with these, clearly excludes it from the above argument.

claim "*of right*," quite distinct from the claim "for payment of any sums due to him by way of *compensation*" (sec. 16).

Lord Lifford's Committee further notice the conflict of decisions as to whether the claimant must elect at the outset to proceed under the Ulster custom, or to abandon it for compensation under sections 3 and 4. This is a matter of the greatest moment, as may easily be seen by the amounts awarded to Ulster tenants where the Chairman has taken the least liberal view of the Act.—(See, for example, the cases in 6 Ir. L. T., pp. 15, 17, and below, pp. civ., cxiv.)

It is well known that the Select Committee of the House of Lords was appointed to enquire into the working of the Land Act in consequence of certain decisions under the custom of Ulster—especially two in the counties of Down and Donegal, which awarded amounts treated by a few Irish proprietors as extravagant * Its promoter endeavoured to upset the most popular portion of the machinery of the Act, namely, the primary jurisdiction of the local courts. The effort, however, completely failed. The Report of the Committee pointed out some difficulties in the working of the Act which have been already noticed; but their sole recommendations

* I extract the following statement from the *Freeman's Journal* of 26th August, 1872.

"VALUE OF ULSTER TENANT-RIGHT.

"Our readers will remember the terrific hubbub created by a decision, of Mr. Johnston, Chairman of the County Down, awarding £1,400 compensation to a tenant "disturbed" from a farm of seventy acres. Those who knew nothing of the matter, or who did not wish to know anything, raised the cry of confiscation of the landlord's property, and this was one of the cases brought before the late Committee of the Lords in order to prove the injustice inflicted on the owners by the Land Act of 1870. For the information of those unacquainted with the real value of the Ulster tenant-right, we note a sale which recently took place in Downpatrick. The occupancy right of the Marlborough farm of land, containing 73a. 3r. 11p. Irish plantation measure, held from year to year, under D. S. Ker, Esq., at the yearly rent of £144 7s. 11d., was set up for sale. Messrs. Nelson and Gardner were the solicitors; Mr. R. T. Lithgow, the auctioneer. The tenant-right sold for £2,900, exclusively altogether of the crop, stock, farm implements, etc. Judging by this standard, Mr. Johnston's award was, instead of being excessive, far below the real value, and to found on similar decisions to his an attack either on the bill itself or the awards made under it, is simply absurd."

were that "the Chairman should be empowered, at his discretion, and on such terms as he may direct, to reserve a case on matter of law directly for the Court for Land Cases Reserved," and that "the suitor should have an absolute right to proceed to the Supreme Court (of Appeal), the Judge of Assize being invested with power, at his discretion, to require security for costs." These recommendations certainly deserve, and, no doubt, will receive, the consideration of the legislature. Whether the last would lead to abuses more serious than any that have arisen from a mistaken exercise of discretion in refusing appeals by the Judges of Assize, is a question at least open to grave doubt.

I have received two letters from Dr. M'Knight, of Derry, from which I quote the following passages. They suggest arguments deserving of serious consideration, and show the great apprehensions excited among the Ulster tenants by the course of judicial decision under the Act.

"There is one point which I have repeatedly argued in the *Derry Standard*, but which a barrister, whose attention I had called to the subject, tells me will never be decided as I wish it, namely, the establishment of a 'presumption of law,' that, within the province of *Ulster*, every tenant's holding should be *a priori* deemed to be subject to the '*Ulster* custom,' unless the *contrary* shall be *proved in evidence*. The effect would be to throw the *onus* of proof upon the landlord, instead of the tenant, as is now very frequently, if not commonly, done; and the consequence is, that a species of judicial law is springing up, and is destroying the 'custom' throughout the rural districts. My argument is founded upon the wording of the Ulster clause, which distinctly treats the tenant-right 'custom' as a *provincial* one—a usage '*prevalent*' in Ulster. I conclude, then, that, *prima facie*, this 'custom' ought to be judicially assumed to be 'prevalent' in every district of Ulster, unless the contrary is proved, and, consequently, that its prevalence in regard to every separate holding within that district should also be assumed, unless negative proof shall be forthcoming. At present, tenants are compelled, in many instances, to *prove* the existence of the custom in regard to their own *separate* holdings—an impossible process in numerous instances, especially where farms have been occupied by the same family for successive generations during 100, 150, or even 200 years, as sometimes happens. Unless the 'presumption of law' shall be in *favour* of the custom, the Land Act will abolish

the latter to a ruinous extent. As to the lease question, agitated by the landlord combination under Lords Lifford and Leitrim, some judges have hitherto seemed to forget that the 'Ulster custom' is primarily a system of dealing between one *tenant* and *another tenant*, and that it involves *no* charge against a landlord, unless he steps out of his own sphere to disturb the mercantile dealings of parties with whose monetary transactions he has no legitimate concern. If the legalisation of the Ulster *custom* means anything, it must mean this, that the monetary *claim* of an *outgoing* tenant against his *incoming successor*—for this is the *essence* of the custom—is now *secured* by *law*, and it will be a strange chaos in our jurisprudence if the unauthorised intervention of a third party can defeat the *recovery of a legal debt*."

"The phraseology at the end of the Ulster clause to which you refer is taken from Sharman Crawford's bill of 1850, and it was certainly not Mr. Crawford's intention that the occupant of each particular holding should be obliged to prove, by documentary or oral proof, its subjection to the custom. I think it might be reasonably argued, that the evidence required should be such as is strictly adapted to the case; and since a land '*custom*' is not an isolated phenomenon, but a '*prevalent*' usage of the country, I think that when this '*prevalence*,' within a given district, is established as a matter of fact, the general 'presumption' of its application to individual cases ought to be pre-supposed in the first instance. The question here becomes one of *special exception* to a confessedly *general rule*, and, in these circumstances, I can hardly think it fair or equitable, or in accordance with judicial analogy in other cases, to throw the *onus* of proof upon the party in *prima facie* possession of a 'customary' local right. On the contrary, the party who alleges an *exceptional* state of circumstances, and who pleads a special *deviation* from local usage, ought, I think, to be required to substantiate his plea by *direct evidence* of the *deviation* on which he relies. The *failure* of this proof would, in tenant-right districts, necessarily amount to proof on behalf of the 'custom,' since a landlord must be in a position to show that he has either *purchased*, or has otherwise legally *acquired*, the benefit of this 'custom,' before the latter can be held as having passed out of the hands of the occupying tenant. If Mr. Butt's '*declaratory*' interpretation of the Ulster clause can be established, it would, I suspect, accomplish all that I want, and possibly a great deal more which I would be delighted to see."

In another place I have spoken of the dangers to which

Ulster tenants are exposed from proprietors who areen deavouring to force them to "contract themselves out of the Act."

NON-CUSTOMARY TENANTS.

Compensation for Disturbance and Improvements.

Whatever difficulties and shortcomings attach to the interpretation and application of the Ulster tenant-right, it cannot, I think, be disputed that the practical effect of this portion of the Act of 1870 has been, generally speaking, to place tenants who can prove under it in a position far more advantageous than that occupied by tenants who, whether within or without the northern province, are only able to establish a claim for disturbance and improvements, or for improvements alone. We have, first, the testimony of Chairmen of Quarter Sessions. One of these gentlemen has observed (see before, p. 13):— "Claims under sections 3 and 4 of the Land Act are not nearly so good as the tenant-right custom or usage."

Another has said :—"As a general rule, the scale of compensation for disturbance provided by the Act is fair and reasonable, particularly where regard is had to the large sum which lands bring when sold subject to the Ulster custom" (Q. S., Morrow *v.* Devling, 6 Ir. L. T. 36). Various testimonies from the same and other sources convince me that this view of the Act is correct. So many conditions and qualifications attach to the claims of non-customary tenants, without and within Ulster, and the expense of enforcing them often so far exceeds the taxable costs, that the amount received by the evicted farmer is, not unfrequently, little, if anything, larger than the allowance he would have received from his landlord in order to secure quiet possession.* Independently, therefore, of disappointed expectations, there is reason to believe that the Act has not, to the extent that the legislature

* This statement is, I conceive, corroborated by the statistics of the Land Act, 1870. (See the General Return ordered by the House of Commons on the 14th of August, 1871, on the motion of Mr. Heron, which is very fully set out and analysed by that gentleman in his paper published in the *Journal of the Statistical and Social Inquiry Society of Ireland* (Part 41, February, 1872); the Return by order of the House of Lords of 12th February, 1872, of Land Cases decided in the counties

intended, put a practical check upon eviction, or the unjust raising of rents.

There is, however, no doubt that the moral effect of the Act has been very considerable, and should not be measured by the mere amount of money actually awarded to Irish non-customary tenants. The great decline of agrarian outrages shows this. On the other hand, the severe repression exercised under the Peace Preservation Act—introduced, as was expressly stated, to meet that class of offences—renders it difficult to say how far the quiescent state of the peasantry in localities heretofore disturbed indicates satisfaction with the results of the Land Act, or proves that this has realised the essential objects of its promoters, viz., a *practical* fixity of tenure at a fair rent.

The shortcomings above noticed are exactly what might be expected from the legal disparities under the Act between the customary and the non-customary tenants, pointed out in the first edition of this book. I shall, therefore, only briefly notice them here. They principally concern three points:—

First—What tenants can claim, and what landlords are liable?

Under the Ulster custom, the tenant-right attaches itself to the holding. Consequently the occupying tenant alone has a claim, and can enforce it against any landlord by whom he is disturbed, whether this be an immediate or the superior landlord. As regards improvements, the position of a non-customary tenant under the Act seems to be substantially the same. But as regards disturbance, it varies in some important respects, particularly in reference to yearly tenancies existing on the 1st of August, 1870, for such tenants, if disturbed on the expiration of a middleman's lease by the superior landlord, clearly have no claim.

A very important question has recently been raised on

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of Antrim and Donegal.) The Report of Lord Lifford's Committee, 1872, refers to an Appendix containing "a Summary of Returns furnished by the Clerks of the Peace in the various counties of Ireland, with reference to the number and nature of cases under the Land Act, and the results of the decisions of the various tribunals before which they have been tried." This Summary, however, has not yet been published.

appeal (Walker v. Ward, Summer Assizes, Wicklow), which affects the *status* of a large body of Irish tenants* under the Land Act. The case was shortly as follows :—†

"The sum of £225 had been given by the landlord to the tenant for disturbance under the decision of the Chairman, and after the deduction of rent the amount of the claim was £187 8s. From this decision the landlord appealed. The lands containing 103 acres, were set in May, 1845, pending a Chancery cause. A lease was then made to the tenant's father at £70 per year. Before the expiration of the lease the tenant's father died, and the tenant entered into possession, and has since continued. In 1852 the rent was raised from £70 to £75, and paid from that time to the month of May last. In August, 1871, the annuity, which was the cause of the original Chancery proceedings, ceased. On the 29th November, 1871, the Master of the Rolls made an order that that the tenant do give up possession on the 1st May, 1872, to the landlord, such giving up of possession to be without prejudice to any right that the tenant might have under the Land Act, Ireland, 1871.

"Mr. Justice Fitzgerald, at the sitting of the Court, announced the course he proposed taking in this case. His Lordship said, 'In this appeal two very grave and important questions have been raised, and I think the proper course to adopt is, if either of the parties so desire, to refer them to the Court of Land Cases Reserved. The first question is, whether the respondent is a tenant within the meaning of the third section of the Act of Parliament. The second, whether he has been disturbed by the act of his immediate landlord, within the meaning of the statute. And there is a third question, in reference to which I entertain no doubt or difficulty, whether, if found not to be entitled to compensation for disturbance, he is not entitled, in any event, to claim for improvements. I am of opinion, and entertain no difficulty in holding that, however the other questions may be decided, he is entitled to compensation for improvements; but I shall, if it be desired, reserve the two other very important questions for the court above, for they are such as must frequently arise in the case where suits are instituted by incumbrancers, and where the owners of estates are minors or lunatics.' "‡

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* Tenants who hold under the Court of Chancery.

† Reported in *Saunders' Newsletter* of 30th and 31st July, 1872.

‡ The tenant having agreed to give up the land upon being given the amount, £26, awarded by the Judge of Assize for improvements, the above two points were not reserved.

Secondly—What tenancies create a claim?

The status of leasehold tenants in the province of Ulster being the subject of conflicting decisions at Quarter Sessions, and undecided by the highest Court of Appeal, I can only refer to the view already submitted (see before, p. 17), and reiterate my conviction, that the customary tenant who holds under a lease is entitled to the full benefit of the Ulster tenant-right, whereas the non-customary tenant similarly situated is subjected to the numerous important limitations as regards compensation for disturbance and improvements specified in sections 3 and 4 of the Land Act.

Thirdly—What claims are sustainable, and how can they be abrogated or limited?

COMPENSATION FOR DISTURBANCE.

In the Preface to the First Edition I have already stated my conviction, that the spirit and language of the Act warranted a liberal construction in favour of the tenant, both as regards disturbance and improvements. To a considerable extent the decisions bear out this view; but it is necessary to comment on some judgments of a contrary tendency.

The Act left a very large discretion to the Chairmen as to the amount they could award to an evicted tenant; and this was particularly the case as to compensation for disturbance. The view suggested in the former editions of this book (see Preface to First Edition) has received confirmation, to a great extent, from the decisions at Quarter Sessions and Assizes. But in a recent case, an eminent judge sitting in appeal is reported to have expressed an opinion which, if adopted, may seriously affect the claims of deserving tenants. I refer to the case of Walker v. Ward (the Wicklow Summer Assizes, reported in *Saunders' Newsletter*, 30th and 31st July, 1872). The facts have been already stated (see above, p. 30), and the following is the portion of the judgment which affected the amount of compensation for disturbance:—

"The main question in the case was, whether a tenant under the Court of Chancery is a tenant within the meaning of the Land Act. It turns on section 3. It was argued on behalf of the tenant, that the fact of the tenancy being for seven years, pend-

ing the Chancery cause, did not preclude the tenant from compensation. It is clear that the tenant is entitled to compensation; it is another question who is to pay it. This appears pretty evident from the glossary of the Act. The tenant had for some years paid the head rent to the head landlord, and merely paid the profit rent to the receiver. It was urged on the landlord's behalf that the tenancy was not within the meaning of the Act; that the tenancy was created by the Court of Chancery, and was also determined by it; that it was not a tenancy from year to year, but liable to determination, *eo instanti* the cause terminates. In section 70 the definition of the word 'tenant' does not admit such a tenant as this within its ambit. The landlord could not have interfered with the tenant, and had a right, when the covenant ceased, to have the possession freed from all charges. The landlord further relied on the fact, that the disturbance must be the act of the immediate landlord. As to the amount of compensation, it was argued on behalf of the tenant that the maximum should be given, as this is a case of a party being for years in possession, paying a very high rent. The principle of compensation is not the value of the land, but the rent paid. It was not argued that the onus of showing that the maximum should not be given was with the landlord."

"I do not agree with the Chairman that the case was one in which the maximum of compensation should be given. I think, in this respect, an error, and a grave one, has been committed, assuming that the tenant is entitled to compensation for disturbance. *The maximum compensation should only be given where capricious evictions take place, or where some act of misconduct has been committed by the landlord, as, for instance, where an improving tenant, paying the best rent to be obtained for the land, is capriciously ejected.* Such a tenant would be entitled to the maximum compensation. Here the Court of Chancery, at the instance of an incumbrancer, took possession of the estate of the present landlord's father, and the tenancy was created not by the landlord, but by the Court of Chancery. No matter how long such a tenancy might last, it must determine with the termination of the suit itself; and when the suit is at an end, all that the landlord has to do is to demand as his right the land, the possession of which has been temporarily withheld from him by the Court of Chancery. The letting for seven years, pending the cause, was liable to be put an end to at any moment by the termination of the suit. There was here no act of the landlord capriciously evicting the tenant, he merely took possession of that which became his when the cause in the Court of Chancery was at an end. His lordship concluded by saying, that if the tenant were by the

Court above to be held entitled to compensation for disturbance, it should be on a low scale, and not to exceed the year and a-half rent which he owed. As to the improvements, he would award £26."

The principle here laid down, I submit, is not in accordance with the spirit, or warranted by the language, of the Act. No doubt much was said about checking capricious evictions; but it was as distinctly stated, that the measure contemplated the extension, *in effect* (though, no doubt, subject to certain limitations), of the Ulster tenant-right to the whole of Ireland.* Now, it is, I conceive, certain that the claim for good-will under that custom is unaffected by the reason why the landlord resumes possession, where he does not permit a sale, but requires the land to be given up to himself. No doubt there may be, and sometimes are, estate-rules limiting the amount to be paid for resumption by the proprietor, but such rules are by no means universal, and the question will have to be decided in each case how far they are valid. I do not see anything in the wording of section 3 to warrant the general interpretation above referred to. The capriciousness of an eviction is an element which may be taken into account; but I contend, that to make such conduct on the part of the landlord the *only* ground for giving the maximum compensation, is not a just or sound interpretation. The third section simply says, "where the tenant is *disturbed* in his holding by the act of the landlord," and declares that "he shall be entitled to compensation (not exceeding the scale specified) for the *loss* which the Court shall find to be sustained by him by reason of *quitting* his holding." The language points not to the motives of the landlord, but to the situation of the tenant. I do not say that the conduct of the tenant is to be disregarded. On the contrary, it forms a legitimate subject for consideration in estimating the compensation for disturbance. But, I submit that where there is no ground for impeaching it, the dispossession of the tenant alone is *prima facie* a sufficient reason for awarding the maximum of compensation. The landlord may have good reasons for resuming possession,

* See the speech of the Right Hon. Chichester Fortescue on the second reading of the Land Bill, 7th March, 1870.

and, so far, the eviction may not be capricious. He may want the land for building, or for his own use, but that does not, I contend, furnish any reason for refusing a well-conducted and improving tenant the maximum of compensation under section 3, just as an Ulster tenant would be entitled, *prima facie*, to the full amount for good-will under the customary right. The facts of the above case show the injustice and danger to tenants of the doctrine laid down by the learned judge. I have pointed out in another place the extensive interests of tenants under the Court of Chancery. If the above ruling be sustained, these must be placed in considerable danger. The principle, however, is of general application and vitally important.

Compensation for Improvements.

No feature of the Ulster tenant-right is more striking or important than the mode in which it practically validates claims, both of recent origin, and derived from the labours of antecedent generations of tenants of the same holding, including alike erections, and those small, but important, improvements in the soil by which mere *land* is converted into the *farm*. It seems idle to talk of extending the northern custom to other parts of Ireland, unless the legislation confers analogous rights. I believe that the Act of 1870 was, to a great extent, framed with this view; but, I regret to say, that judicial interpretations have gone a long way to frustrate the design of the legislature. I refer to two important cases, appeals, one to the Assizes, the other to the Court for Land Cases Reserved, viz., Darragh v. Murdoch, Assizes, 5 Ir. L. T. 69, and Holt v. Lord Harberton, Court for Land Cases Reserved, 6 Ir. L. T. 1. (see below, p. cix.)

In Darragh v. Murdoch, the facts were shortly as follows:—

"The claimant's father and grandfather had been for more than one hundred years in occupation of the farm in question, which contained about nine acres of land. The claimant's father had held the farm under a lease for his own life, which expired in June, 1866, when he died. The claimant thereupon entered into and remained in possession of the farm until the month of November, 1867. In that month an agreement in writing, between the respondent, the claimant, and two other persons named Kirk and

Sloane, was entered into, by which the respondent agreed to let to the claimant, Kirk, and Sloane, the farm in question for one year certain, from the 1st of November, 1867, at the rent of £22 16s. 9d., which was an increase upon the rent previously paid; and it was, amongst other things, provided by the agreement, that the respondent might, at any time during the year, enter upon the farm, and lay down materials for building in any place he might consider most convenient. Kirk and Sloane appeared to have no interest in the farm, and to have lent their names as sureties for the rent merely. In November, 1868, and again in November, 1869, a similar agreement was made. In May, 1870, a notice to quit was served, and since then the claimant had been evicted."

In Holt v. Lord Harberton, the following were the main facts:—

"The claimant held the lands in question (450a. 3r. 6p.) under a lease (still subsisting) from the 1st of May, 1844, for one life or twenty-one years, made by the respondent to the father of the claimant, who, at the time of making said lease, held 365 acres of the lands on which the improvements sought to be registered had been made (according to the evidence given before the Chairman), under a lease for his own life, or twenty-one years, but (according to the case stated by the Judge of Assize) as tenant from year to year.

"The improvements which the claimant sought to register were a dwelling-house and offices, estimated at £4,379; a herd's house, estimated at £200; gate-piers and gate, £100; and other improvements, in all estimated at £8,166. The evidence given before the Chairman established the following facts, namely, that the largest portion of the lands was held by the claimant's father under a lease which was subsisting when the lease of 1844 was made; that the improvements which it was sought to register, and the right to which was disputed, were all made on the lands so previously held, and were so made previous to 1844; that Lord Harberton's agent, having seen and approved of the improvements, had, in consideration thereof, recommended that the lease of 1844 should be made, and it was accordingly made; that the new lease, which bore date the 1st of October, 1844, comprehended as well the lands on which said improvements had been made as an adjoining farm of 91 acres; and that the rent of £318 10s. thereby reserved was less than the rent of the two farms theretofore paid by a sum of £8, or thereabouts."

It will be observed that in both these cases the important

question was considered, who are "predecessors in title" to the "holding" in respect of which the claim was made? After a very careful study of the statute and the arguments, I have come to the conclusion that the above two decisions are erroneous, being founded on a narrow and technical construction, suggested by legal doctrines directly at variance with the scope and, I believe, the general language of the Act of 1870. It is remarkable that the eminent judge who decided the case of Darragh v. Murdoch, in another case expressly held that the statute should be construed in a *popular* sense—(see Hill v. Earl of Antrim, 5 Ir. L. T., 70); but it strikes me that he deviated from this sound principle in Darragh v. Murdoch. The question mainly turns on the interpretation of secs. 4 and 11, and I shall briefly indicate my chief reasons for believing that the claims in both the above cases ought to have been allowed. These may be reduced to three heads.

1st. The Act is essentially *retrospective*. The general provisions are manifestly conceived and framed in that sense, subject to certain definite exceptions. The *declaration* of the legality of the Ulster custom (sec. 1), incontrovertibly has a retrospective operation, though the question from what precise period it shall be deemed legal in each case, is often open to question and difficult to decide. This fact alone suggests that the non-customary legislation must be retrospective, and the impression is confirmed by the special provisions. The legislation as to compensation for disturbance (sec. 3) expressly distinguishes tenancies existing on the 1st August, 1870, (*i.e.* created before the passing of the Act) from those created after that date; and the clause which overrides contracts at variance with the Act applies as much to the one class as to the other. The same retrospective construction is clearly required by the scope and language of the provisions respecting compensation for improvements (sec. 4). The special proof of this proposition, furnished by the language of this section and its complicated sub-sections, are too numerous and too obvious, especially to any legal mind, to require special notice.

The 7th section (claim for good-will) requires the same retrospective construction.

2nd. The term "holding," is not equivalent to, but distinguished from "tenancy;" the former denoting the land which is the material subject of the contract, while the latter signifies the legal relation or contract itself. This important distinction of thought and language is uniformly carried out in the statute. If the "holding" meant the particular tenancy the provision in favour of landlords who may purchase the Ulster tenant right custom (sec. 1) would have no practical value. The difference and, indeed, contrast between the two terms, "holding" and "tenancy," is very clearly expressed in the last paragraph of sec. 4. It is of the utmost importance to bear this distinction in mind. On it hangs the fundamental principle of *continuity of interest*, transmitted from generation to generation of tenants, as the basis of the claim of the subsisting tenant.

3rd. The phrase "predecessor in title"—(secs. 4, 5, 6, 7, 11)—should not be construed in the strict legal sense, but in a popular one. As used in this Act, I submit, it does not signify an identity of contract, but a transmission of the possession from one tenant to another. A contract may, no doubt, *expressly* exclude the new tenant from the benefit of the Act, and, in certain cases, this exclusion is legalised. But on the other hand, a new contract, simply as such, does not, I contend, destroy the claim of the incoming to stand in the place of the outgoing tenant. In this respect, I conceive, the construction put on the Act in the above two cases is essentially wrong and most prejudicial to the just claims of the tenantry. It arose, I believe, primarily from confounding the words "holding" and "tenancy." The 11th section plainly treats a "derivation of *title*" as equivalent to a "derivation of the tenant's *holding*." Nay more, this section shows that the legislature intended to legalise the successor's claim, in respect of improvements made by his predecessors in the holding, ALTHOUGH the claimant had made a new contract. I submit that this appears from the alternative definition given (sec. 11) of a derivation of the holding. The word "or" indicates that the case of derivation by payment to the preceding tenant is different from that of derivation by assignment or operation of law. Now, inasmuch as the latter sort of derivation includes every case where there is *a con-*

tinuity of contract, it follows irresistibly that the former kind relates to cases where there was a substitution of one tenant for another, even though the incoming tenant may have entered into a new contract.

The decision in Holt v. Lord Harberton was also, I apprehend, influenced by an objection which is presented in the following question addressed to the council for the claimants, by an eminent member of the Court of Appeal. "Does your argument go to this, that if a tenant had a farm under continued leases for 150 years, he could claim as against the present landlord for all improvements made during that long term of years?" This difficuity is more apparent than real. It is completely met by a distinction which the Act has carefully marked; that is to say, between the claims which the tenant is allowed to make and the amount of compensation which shall be awarded to him. This is clearly marked in the last proviso to the 4th section. In the above case the Supreme Court of Appeal actually recognised this distinction, holding that all the specific improvements made by either landlord or tenant might be registered under section 6, even those in respect of which, under section 4, no compensation could ever be awarded. Supposing, therefore, the tenant's claims on foot of his predecessor's improvements had been admitted valid in principle, they would have been modified in practice. Whenever the tenant put forward his claim, the amount awarded would have been affected by the length of possession, the rent, and other circumstances of the case. The statute, I am convinced, on the one hand never meant to cut away the ground from under tenants' feet by mere technicalities, on the other hand, it expressly made provision for adjusting the equitable claims of both sides.—(See sec. 4, and particularly the last paragraph, and sec. 18). The facts of the two cases above cited bear out this view of the Act in both their aspects, and a careful examination of the law and the facts satisfies me that these particular decisions of the courts of appeal are unjust, unsound, and impolitic.

As regards the extent to which the claims of tenants can be cut down or abrogated, the situation of customary and non-customary tenants, I conceive, differs widely. It has, indeed, been decided, and I believe rightly decided (see

below, p. cvi.) that under the custom of Ulster, the tenant who sublets without the consent of his landlord, forfeits his claim. But I conceive that sections 9, 10, 13, 14, and 15 only apply to non-customary tenancies (see above, p. 24), and there is no doubt they impose restrictions disadvantageous to the tenants' claims, the justice and policy of some of which is at least very doubtful. I allude particularly to the disqualifications attaching to arrears of rent, and certain conditions.

The 58th section has been described (per Lawson J.), Lord Ashtown v. Larke, Ir. R., 6 C. L. 277, see below, p. cxii.), as one "certainly well framed to give rise to questions." Among these I must notice that as to the form of notices to quit. One writer of authority recommends that it should simply be framed so as to require the tenant to deliver up the premises on the last gale day of the year, unless there be an express agreement to the contrary.* But other members of the bar, whose opinion is entitled to weight, consider that the notice should be framed in the alternative, so as to determine the tenancy under the old law (namely, with reference to the period when the tenancy commenced), and at the same time to give the tenant the enlarged period to which he is entitled under the Act.

The Land Act of 1870 has been called, justly so, I think, "a half-hearted settlement."† Great allowance should, doubtless, be made for statesmen who, on the one hand, had to contend against deeply-rooted prejudices, national, economic, and juridical; on the other, were obliged—in the absence of any large and well-matured plan—to choose between a multitude of partial and crude schemes, some of them presented at the last hour. But this is a widely different attitude from that of satisfaction. The duty of those who take this view

* *The Landowners' and Agents' Practical Guide*, by Thomas De Moleyns, Q.C., 6th ed., p. 69.

† "Had there been no American outlet, the Church and Land question of Ireland would not have waited so long for a half-hearted settlement"—"India," p. 31; an address delivered at the Positivist School on the Festival of Humanity 84 (1st January, 1872), by Richard Congreve. London: Trubner & Co., 60, Paternoster-row, 1872. The remark just quoted concludes a passage where Dr. Congreve points out, with equal truth and sagacity, the grave moral and political objections to one favorite remedy of political economists for social evils—emigration.

seems plain. They ought to give the fullest weight to the real value of the work accomplished. They ought, no less, in a candid but fearless spirit, to point out its shortcomings, and insist upon amendments which are needed to remedy defects, and prepare the way for a bolder and more complete measure of reform.

I feel pleasure in quoting the following testimony of a northern proprietor, who has had good opportunities of observing the effect of the Land Act, and whose judgment, given in the middle of 1871, has been since confirmed by other competent authorities :—

"You ask my opinion of the Land Act. As far as other parts of Ireland are concerned, I consider it a most useful and greatly required measure; and am happy to say, from conversations I had with many tenant-farmers in the south, it has spread a feeling of security and contentment among them. In Ulster, and particularly in this county, it will alter but little the relationship between landlord and tenant. With us, the tenant's interest was so faithfully and liberally allowed, except in a very few cases, the Act will not, generally speaking, be called into requisition. Where a tenant is allowed to sell for a sum to be fixed by two arbitrators, one chosen by himself, the other by the intending purchaser, he has all that ought to be desired. But undoubtedly there were instances—particularly where properties were purchased at a high value in the Landed Estates Court—in which landlords attempted and even succeeded in raising rents inordinately. Such speculative purchases and the injustice to the tenants that followed, will be controlled by the operation of the Act, and, in this respect, beneficial consequences must ensue."

I am also glad to state that the Board of Works have rescinded their rule, which refused a loan for farm buildings or farm dwelling-houses, or both, in respect of farms the annual value of which, under the Public Valuation, was less than £50. Another restriction imposed by Act of Parliament (10 Vic. c. 32) still remains—namely, that the applicant, if a tenant for years, must have a term of at least forty years yet to run. All farmers who have a less interest—including, of course, the immense majority of tenants holding from year to year—can only obtain improvement loans by applying through their landlords. This, I am informed, is frequently done; but, considering that the tendency of the Land Act is to throw,

increasingly, the making of improvements on the tenants themselves, it seems deserving of consideration, whether the above statutory restrictions might not be advantageously modified.*

The serious shortcomings and defects of the Land Act, as a measure of legal reform, have been, to a considerable extent, supplied and counterbalanced by its moral results. In some cases, even "good landlords" have shown a spirit of irritation and resistance to a measure which avowedly took their model as its basis. But, generally speaking, the Irish proprietors have, I am disposed to believe, offered no factious or narrow opposition to the Act, and not a few have cordially accepted it.

It is, however, necessary to notice the efforts which have been made to frustrate the intentions of the legislature by contracts which keep within the letter of a statute whose complicated provisions unfortunately offer too many facilities for subtle evasions. Such dealings are, I fear, not unfrequent; but as they naturally shun the light, it is not easy to demonstrate their existence, or to estimate their number. Occasionally they turn up in courts of justice, as in the recent case of the Queen at the prosecution of Patrick Geelan v. the Justices of Leitrim,† where the Lord Chief Justice observed:—"The facts, the merits, and the law are with the tenant in this case. The new terms of letting form an amazing document in length, and I venture to say that Patrick Geelan, if he read them, would never understand them." I believe that evasions of the Land Act, if sought to be openly enforced, will be defeated in courts of justice. But the tenant's position, and his dread of litigation, will paralyse his efforts to improve. Such attempts, therefore, deserve exposure, where this is possible, and the severest condemnation by proprietors, the courts, and the public.

Another proceeding, legalised indeed by the Act, but susceptible of great abuse, needs to be noticed. I refer to the

* I have thought it desirable to print the forms of the Board of Works which refer to the granting of improvement loans (see below, p. ci.). A small pamphlet entitled, *Instructions to persons desirous of obtaining Loans*, will be sent free of expense on application to the Secretary of the Board of Works.

† Reported in *Saunders's Newsletter*, 15th July, 1872.

requiring of tenants to "contract themselves out of the Act." I felt it right to call attention to this subject in the first edition of this work, and observation during two years has only confirmed my conviction of its importance. One remarkable case of this kind at present occupies the public mind in the north of Ireland. The facts connected with it are stated in the following memorandum. This, together with a copy of the proposed agreement therein referred to, have been furnished to me by a gentleman who has long occupied a foremost place in the struggle for tenant-right, and who vouches for the correctness of the statement and the authority of the document, Dr. McKnight, of Derry.

"The agreement, of which the accompanying document is a copy, was introduced some four or five years ago, and when a farm was sold the purchaser or incoming tenant was required to sign it before being accepted as the tenant. This document speaks for itself, and public attention having been directed to it, the tenants became aware that it would be fatal to their tenant-right, and in only a few instances has it been signed. The tenants were called on to sign this form of agreement for a new lease at the new rent. It will be observed that it is very stringently drawn, providing that in case the tenant fails to take out a lease the company are absolved from any claim as against them, but enabling them to take possession of the holding without having recourse to any legal proceedings; also that the covenants of the new lease were to be similar to those in the existing leases. This had a *specious look*, and it might have induced many tenants to sign it, in ignorance of the *altered significance* of these covenants. Counsel's opinion, however, had been taken on this point, and they advised that these covenants entered into *after* the *passing of the Land Act* would be fatal to the tenant's claim for tenant-right."

The following is a complete copy of the agreement in question:—

[ENDORSEMENT.]

No. , Rental Fol. , Ledger Fol. , Holding No. , Map No. .
Allowance Ledger Fol. , Dated , 1872.
The Fishmonger's Company to ,
Agreement for lands in .

Commencing from 1st November, 1872. Term, 21. Expires 1st November, 1893. Rent, £ s. d.

I, , of , in the parish of , in the county of Londonderry, Ireland, farmer, do hereby agree to take from the Wardens and Commonalty of the Mistery of Fishmongers of the city of London, a lease for the term of twenty-one years, from the first November, One thousand eight hundred and seventy-two, of my present holding as specified in my existing lease, under which I hold the same from the said Wardens and Commonalty , at the yearly rent of pounds, shillings, payable quarterly, on the first February, the first May, the first August, and the first November in each year, free and clear of all rates, cesses, taxes, impositions, and deductions whatsoever (quit and crown rents only excepted). And I also agree to accept such lease, and that it shall contain all such covenants, conditions, and agreements as are now inserted in my said existing lease. And I further agree that in the meantime and until the said lease shall be granted, and a counterpart thereof executed by me as hereinafter mentioned, I will well and truly pay, or cause to be paid to the said Wardens and Commonalty, or their agent, the said yearly rent of pounds, shillings, quarterly, as aforesaid, from the said first November, One thousand eight hundred and seventy-two, and observe and perform all the covenants, conditions, and agreements hereinbefore mentioned or referred to, and that the said Wardens and Commonalty shall have all such rights and remedies against me as landlords are by law entitled to have or use, either by distress or otherwise, for the recovery of any rent due or for the breach of any of the said covenants, conditions, and agreements. And I further agree to execute a counterpart of such lease, and pay all fees for such lease and counterpart as are usually paid for leases of a like nature granted by the said Wardens and Commonalty, and which lease and counterpart shall be prepared, engrossed, and printed or written by such person or persons as the said Wardens and Commonalty shall direct. And in the event of my refusing or neglecting to accept such lease and to execute and deliver a counterpart thereof on being required so to do by the said Wardens and Commonalty or their agent, then, and in such case, the said Wardens and Commonalty, or their agent, shall be at liberty to declare this agreement null and void as against them, and to enter upon and resume the possession of the said holding without instituting any proceedings at law, and this agreement shall be considered and deemed a sufficient power and authority

to them or their agent so doing. And lastly, the said lease shall also contain a proviso to the effect that on payment of the said yearly rent of pounds, shillings, as and when the same shall become due, and on the production of the receipt or receipts showing that the poor-rate and the county cess-rate have been duly paid by me, then the said Wardens and Commonalty, or their successors, shall and will allow unto me a moiety or one-half of such poor-rate and county-cess upon and in proportion to the actual amount of the said rent paid.

Dated this day of , One thousand eight hundred and seventy-two.

Witness

On behalf of the above-mentioned Wardens and Commonalty, I hereby accept, ratify, and confirm the above agreement.

Dated this day of , One thousand eight hundred and seventy-two.

Agent to the Wardens and Commonalty of the Mistery of Fishmongers of the city of London.

Witness.

The foregoing agreement would oblige the tenant to accept a new lease, containing "all such covenants, conditions, and agreements as were then inserted in his said existing lease." I have had an opportunity of perusing one of the printed leases referred to, and I find that it contains clauses binding the tenant to uphold the demised premises, and the present and future buildings thereon, &c., in good repair, and on the determination of his interest therein, to yield up the same to the Fishmongers' Company; also clauses annulling the lease for a variety of causes, among others, in case the tenant's rent should be in arrear for twenty-one days after having been lawfully demanded, or in case the tenant should become bankrupt or insolvent. It is evident that the tenants have good reason to be alarmed as to their position. The effect of the Land Act on existing leases which contain the *ordinary* clauses, in the province of Ulster, is still undecided, and, supposing the decision to be given in favour of the tenants, it by no means follows that the same construction would apply to such leases as those on the Fishmongers' Company estate, still less that the tenants could *now* enter into similar contracts without entirely destroying their hereditary claims for the Ulster custom.

I deem it right also to call attention to the form adopted by the Receiver-Master of the Court of Chancery in Ireland.*

Covenant to bar clauses under the Landlord and Tenant (Ireland) Act, 1870.

(Applicable only to tenants rated at or over £50.)

"And whereas the lands and premises hereinbefore mentioned and hereby demised are not subject to the Ulster tenant-right custom, or any other usage mentioned in the Landlord and Tenant (Ireland) Act, 1870, and are valued under the Acts relating to the valuation of rateable property in Ireland, at an annual value of not less than £50, the said A B, doth hereby, for himself, his executors, administrators, and assigns, covenant and agree with the said C D, his executors, administrators, and assigns, that at the expiration of said term, or other sooner determination of this demise, or at any other time whatever, he, his executors, administrators, or assigns, will not make, or shall not be entitled to make, any claim whatever under the said Landlord and Tenant (Ireland) Act, 1870, for improvements, disturbance, or any other cause whatever; and that these presents and this covenant and agreement on the part of the said A B, shall be a good and sufficient bar to any such claim, both at law and in equity."

This order affects "about four hundred estates, occupied by nearly 20,000 tenants."† The conscientious and distinguished judge who now occupies the position of Receiver-Master, and who possesses peculiar qualifications for the office, will, no doubt—as indeed he states is his practice—give a careful attention to applications for the making of improvements by tenants under his jurisdiction. But I may be permitted to doubt whether the *system* which requires such applications to be made in Dublin, is not calculated, by its expense and delay, to prevent them being made. I am encouraged in this view by finding that Master Fitzgibbon strongly advocates the appointment of local inspectors of works. At the same time the general order just noticed, must have the effect of encouraging proprietors to follow a similar plan of excluding

* This is taken from Mr. De Moleyns' *Landowners' and Agents' Practical Guide*. Sixth ed., 1872, appendix, p. 522.

† *The Land Difficulty of Ireland*, by Gerald Fitzgibbon, Esq., Master in Chancery, London, 1869, p. 78.

the larger class of tenants from the benefit of the Act, and this, it appears to me, is a just subject for regret.

Among auxiliary reforms there is one which, desirable on other grounds, is rendered indispensable by the passing of the Land Act. I mean the investing of the Chairman of Quarter Sessions with a limited but sufficient equitable jurisdiction, as regards both plaintiff and defendant, embracing bankruptcy and insolvency, admiralty, minor, and lunacy matters; and also giving him jurisdiction to a certain amount where the title to land comes in question. The necessity for such an extension of the powers of the local courts has been peculiarly felt in the province of Ulster, where, hitherto, the agent's office has, to a large extent, practically exercised an equitable jurisdiction. A northern proprietor explains the former practice and present want in the following extract from a letter addressed to me :—

"Just at this moment there only occurs to me to suggest the utility of giving equity jurisdiction to the assistant barristers, in order that they may be able to settle cheaply and authoritatively the many little family questions that arise among small tenants. Hitherto the landlord took these things in hand, and gave the decision which he thought most just; if the terms he imposed were not complied with, he was in the habit of enforcing them by serving a notice to quit, and if necessary resorting to ejectment. But landlords will not henceforth put themselves in so disagreeable a position, when their own interests are but little concerned. The questions I allude to are such as arise out of wills, charges on the farms, the maintenance of widows, &c. These the assistant-barrister should be enabled to take cognisance of and settle on equitable principles."

But the need of a like reform is no less real for the rest of Ireland. Thirteen years ago it was pointed out by Dr. Hancock,* and the subject has been recently investigated by Mr. Constantine Molloy,† from whose essay I make the following extract :—

* *Two Reports for the Irish Government on the History of the Landlord and Tenant Question in Ireland, with Suggestions for Legislation.* First Report made in 1859, second, in 1866, by W. Neilson Hancock, LL.D. presented to both Houses of Parliament, by command of Her Majesty, 1869.

† "The Irish County Courts"—*Journal of the Statistical and Social Inquiry Society of Ireland*, vol. 5, part 38, 1870.

"The course of legislation during the present session of Parliament indicates very clearly what the future of the County Courts of Ireland will be. They will be the courts in which all the proceedings with respect to the property of the class above the mere labourer, and below the proprietary, professional and business classes, will be disposed of. As this change appears to be inevitable, what is of immediate importance is, that the further steps for the necessary extension of the jurisdiction of the court, and for the proper organisation of the staff of the court, should be taken as promptly as possible; and we have a right to ask that all the principles which have been sanctioned by the most recent authorities in England on similar subjects should be promptly applied.

"One of the principles recognised by the Judicature Commission in England is that each court should, as far as possible, be able to give complete justice upon any case that comes before it; and one of the most obvious violations of this principle occurs when the jurisdiction of the local court is excluded by a matter of title arising, however small in value the right may be. And although, for the purpose of the Act, it is only necessary to determine the matter between persons having the most temporary occupation of land, and although the result of the litigation would not in the least bind persons not parties to the suit—in all such cases of title, when the matter in dispute will not admit of, or the parties are unable to bear the cost of proceedings in Chancery or the superior courts of common law, there is a partial denial of justice, which brings the law into contempt, and leaves rights to be maintained by force, instead of being determined by law, and therefrom have resulted crimes which bring discredit on the country.

"The next branch of the question is the extension of equitable jurisdiction. The principles of law recognised in courts of equity are wise and just modifications of the common law. The common law courts, as stated by the Judicature Commissioners in their reports, were confined by their system of procedure in most actions, and the remedy which the common law courts were able to afford has been found to be, in very many instances, totally insufficient for the adjustment of the complicated disputes of modern society. Large classes of rights, altogether ignored by the courts of common law, were protected and enforced by the Court of Chancery, and recourse was had to the Court of Chancery for the purpose of obtaining a more adequate protection against the violation of common law rights than the courts of common law were competent to afford. It follows from this

that any omission to extend to the humbler classes any branch of equitable jurisdiction is a serious denial of justice to them. This point was noticed by Dr. Hancock two years ago, in his Reports on the Landlord and Tenant Question, which have been recently presented to Parliament. 'According to the theory of our law,' he says, at p. 44, 'all men have equal rights to its advantages, but it happens in practice that arrangements are often allowed to grow up, which in fact exclude large classes from all benefit of some of the best parts of our laws.' After given illustrations of this, he adds: 'I entertain a strong opinion that the Assistant Barristers' Courts should be entitled to exercise, with regard to the less wealthy classes of the community, all the jurisdiction which the Court of Chancery does with regard to the rich. The Assistant Barristers' Court is now a court of equity for the defendant. It ought, I think, to be also a court of equity for the plaintiff.' He refers to the same subject in his Report of 1866, when he says, p. 70, 'A suggestion which I made in 1859 about the Irish County Courts being made a complete Court of Equity for the poor, was in 1865 carried out in England, by statute 28 and 29 Vict., cap. 99, entitled "An Act to confer on County Courts a limited jurisdiction in equity." This Act deals with the case of minors having small properties. The law of contracts amongst the rich rests as much upon the jurisdiction of courts of equity to enforce them as upon that of courts of law, and it is proper that those who desire that the dealings of poor tenants should rest on contract, should see that they have access to cheap equitable as well as cheap legal redress.'

"The Land Bill of the present session rests the decision of the disputes between landlord and tenant upon the equities clause, and in the fullest manner fuses law and equity in the decision of the different questions that will arise between them. All that is wanted is to complete this jurisdiction, by giving to the Irish County Courts an equitable jurisdiction equal to that of the English County Courts, not in landlord and tenant questions alone, but in all questions, and amongst all classes, to the limits stated."

SALES TO TENANT-FARMERS.

Attention has been so strongly directed to the good results of the Landed Estates Court in clearing off an enormous mass of debt which rendered proprietorship illusory and embarrassed all agrarian relations, that the grave defects and positive mischiefs of this legislation have been overlooked.

It is now indispensable for us to consider these, in order to remedy, as far as possible, their results.* The just claims of the tenant-farmers to protection were entirely overlooked. It is a matter of notoriety, that the Landed Estates Court acted as a direct discouragement to the granting of leases, since these would have precluded the raising of rents, and thus diminished the advantages unjustly obtained by vendors and their creditors, at the expense of the tenants. The class of new proprietors created by these sales included a large number of men who, having realised fortunes in trade and manufactures, had no other idea than that of making a good investment. These causes produced a strong sense of insecurity and injustice among Irish farmers, which rendered still more imperative the enactment of a Land Act. The Act of 1870, as already stated, sought to remedy these evils by altering the *status* of the tenants. But it proposed a still deeper reform, by facilitating the transformation of farmers into proprietors. The machinery for this process (as somewhat altered by recent legislation) has been elsewhere described (see Practical Analysis). But the great interest attaching to the subject induces me to give some particulars of the actual working and results of the new system of Government loans for land purchase.

The following statement is taken from the last Report of

* It does not fall within the scope of this work to study the *sources* of these aberrations, but I cannot omit to state my conviction, that they must be sought in the prevalence of narrow economic conceptions, unsupported by history and fact, and quite inadequate to furnish a statesman-like policy. The triumphs of free trade in England, cotemporaneously with the Irish potato famine, gave an impulse to the doctrine of *laissez-faire*, and largely contributed to blind the public mind to its total inadequacy as a solution of social problems, especially in a society so peculiarly constituted as that of Ireland. The disastrous effects of this one-sided philosophy, whose watchwords are, "emigration" and "contract," may be traced in the structure of the Land Act of 1870, in the attitude towards it of some Irish proprietors, and in the indifference of the Government to the great question of purchasing the railways by the State in Ireland. Those who wish to study these momentous, but difficult questions, will do well to consult the remarkable series of essays by M. Pierre Laffitte, entitled, "De la Stabilité de l'Equilibre Economique," contributed to Nos. 7, 8, 9, and 10 of "La Politique Positive," *Revue Occidentale*, Paris, and Trübner and Co., 60, Paternoster Row, London.

the Board of Public Works in Ireland, issued on the 25th of May, 1872.

LANDLORD AND TENANT ACT, 1870.

"In our last Report it was stated that there had been received up to the 31st March, 1871, 20 applications from tenants desirous to purchase their holdings under the provisions of the Act, and that in seven of these cases we had, with your Lordships' sanction, advanced sums amounting altogether to £10,720.

"We have now to report that during the financial year ended 31st March, 1872, 312 applications had been received, 220 of which have been sanctioned, and in 88 of those cases the sums allocated in aid of purchase have been lodged, amounting for the year now reported on, £45,829 13s., making with the sum of £10,720 lodged in 1870-71, a total of issues for this service, of £56,549 13s. The total extent of land purchased with the aid of loans from this Board is 5,564a. 2r. 38p.

"Of these applications, 209 were from tenants on the Londonderry estate of the Marquis of Waterford, sold in the Landed Estates Court, in December of last year, 127 of which have been sanctioned, 82 being refused by reason of having delayed their applications to this Board until after they had been declared the purchasers of their holdings in the Landed Estates Court. The case of these tenants has been the subject of correspondence with your Lordships, and is now in abeyance, pending legislation.

"The great majority of the applications made are under the 45th section, 'where an absolute order for the sale of an estate has been made by the Landed Estates Court.' The Board have, however, received 16 applications under section 44, cases where the landlord and tenant had agreed as to the purchase by the latter of his holding, and taken the steps prescribed by the 32nd section (part ii.), by obtaining the order of the Court confirming the agreement. No advance has, however, yet been made under the 44th section, the applicants not having complied with requirements of the Act by lodging their portion of the purchase-money.

"Under the 42nd section of the Act, which provides for advances to landlords to enable them to discharge a tenant's claim for compensation for improvements, there have been two applications, in reply to which we have intimated our being prepared to entertain them on the necessary steps being taken by the Civil Bill Court, pursuant to the provisions of the section.

"The following table shows the numbers and amounts of the loans made since the commencement, according to provinces and counties :—

SCHEDULE showing the number of cases in which Advances have been made to Tenants for the purchase of their holdings, stating the total amount of the purchase-money, the sum advanced by the Board, the number of acres purchased, with the annual rent and Government valuation of same, up to 31st March, 1872.

—	No. of applicants	Amount of Purchase Money.	Amount Advanced.	Number of Acres.	Annual Rent.	Tenement Valuation.
		£ s. d.	£	A. R. P.	£ s. d.	£ s. d.
LEINSTER—Dublin,	1	1,140 0 0	750	36 2 37	40 0 0	48 5 0
Kilkenny,	12	13,282 0 0	8,454	928 0 23	572 15 2	520 5 0
Longford,	1	1,100 0 0	600	59 0 13	45 0 0	40 0 0
Meath,	6	21,672 0 0	12,973	1,009 3 23	1,115 0 0	1,029 10 0
Wexford,	1	640 0 0	420	76 3 34	30 0 0	25 10 0
Wicklow,	3	3,510 0 0	2,350	186 0 38	155 12 0	135 0 0
Totals,	24	41,294 0 0	25,547	2,297 0 8	1,958 7 2	1,798 10* 0
MUNSTER—Cork,	1	540 0 0	280	21 0 32	26 14 6	16 10 0
Kerry,	1	1,370 0 0	840	299 1 6	86 0 0	65 15 0
Tipperary,	1	900 0 0	600	91 1 26	72 18 4	62 0 0
Waterford,	1	1,000 0 0	500	26 0 18	45 0 0	32 0 0
Totals,	4	3,810 0 0	2,220	438 0 2	230 12 10	176 5 0
CONNAUGHT—Roscommon	1	1,605 0 0	1,070	173 3 32	130 0 0	95 5 0
ULSTER—Antrim,	1	1,050 0 0	500	89 2 35	34 0 0	30 0 0
Down,	1	4,100 0 0	2,600	123 3 28	179 13 9	145 10 0
Londonderry,	32	25,610 5 5	16,970	1,328 2 27	879 16 5	946 14 6
Tyrone,	25	11,679 3 6	7,642	613 1 31	497 1 10	480 0 0
Totals,	59	42,439 8 11	27,712	2,655 2 36	1,590 12 0	1,602 4 6
Gross Totals,	88	89,148 8 11	56,549	5,564 2 38	3,909 12 0	3,672 4 6

The difficulty above referred to as affecting the tenants of the Londonderry estate of the Marquis of Waterford has been since completely removed by the 35 & 36 Vict., c. 32, sec. 1, (see below, p. lxxxv.).

There has been much discussion, and considerable variety of opinion as to the price of farms bought by the tenants under the Act of 1870. The following statement received by me from the Rev. N. M. Brown, of Newtown-Limavady, Co. Derry, is important, as showing the impression of the tenants themselves, who purchased at the sale of the Waterford estate.

"The Waterford tenants have bought some eighty lots out of 148, and our experience is that the people have had to buy at a *high figure*, say an average of thirty years' purchase on the rental. The Government loan made the tenants anxious to buy, and the managers of the sale, knowing their anxiety, *kept up the price* above the rates at which property is usually sold. Even at the public auction in the Court, six or eight solicitors were employed to bid against the tenants, and to *buy in* any lots that could not be run up to the appointed price. The buying clauses, therefore, of the new Act has benefitted *landlords selling* fully as much as tenants buying. Whether it be regarded as an evil or the contrary, there can be no doubt that the Government subsidy has *raised the price* of real property. Dear and all as the people have purchased, I am prepared to inform you that they much prefer being the proprietors of their own holdings, to being tenants under any landlord. The lending clauses could be improved by the following changes, viz :—

1st. Three-fourths of the money (as at first proposed) should be advanced instead of two-thirds. 2. Three-fourths of the tenants in any lot should get the loan, if outsiders take the remaining one-fourth ; and the latter should get half of the money. 3rd. A mortgage to a capitalist, as a second charge, should not be regarded as an "alienation" and a "forfeiture" of the property. 4th. Sales, transfers, and bequests of property liable to the Government annuity should be simplified."

I believe Mr. Brown's estimate of the rate of purchase by the tenants is below the average. This will appear from the following figures.*

* They are based upon a rental of Waterford estate, which has been kindly furnished to me by the Landed Estates Court. It shows the

The total average sold (excluding mere head rents) was 36,957 acres. Of these the general public purchased 23,440 for £279,326, the aggregate yearly rents being £9,594. Two hundred and forty-five of the tenants bought 13,517 acres for £152,235, the aggregate yearly rents of which amounted to £4,633. Thus the rate of purchase given by the general public was twenty-nine years' rental; that by the tenants nearly thirty-three years' rental. The difference in the average rate of purchase is very considerable, but the difference becomes still more striking when individual cases are compared. I have examined a good many of the sales separately, and this examination shows, that while not a few of the tenants' sales reached thirty-four years' purchase, and even a higher figure, and seldom fell much below thirty, the sales to the general public, in many cases, did not realise twenty-eight years' purchase, and rarely exceeded thirty. The result is in accordance with what might be expected. Tenants naturally cling to their houses and farms, and the facilities afforded by the Government loan must increase their disposition and ability to give high prices. It is also natural to suppose that the tenants most likely to buy are those whose farms have been most highly improved by their predecessors and themselves. A remarkable feature disclosed in the Waterford estate sale favours this supposition. I find that while the aggregate yearly rent of the portion bought by the general public was £9,594, the public valuation of the same was £10,536. The public valuation of the portion bought by the tenants amounted to £6,170, as against an aggregate rental of £4,633. Comparing these figures, and assuming the rental to be equable on the estate, we see that the tenants purchased the most improved portions. This may help to account for the higher prices they gave, as compared with those paid by the general public.

In connection with this question of the selling value of properties bought by tenants, I wish to point out a fallacy into which

particulars of the price paid for each lot, distinguishing those bought by tenants and by the general public, respectively. The figures given above are taken from calculations made upon this rental, on the accuracy of which I can place entire reliance.

some have been led, by assuming that the public valuation of Ireland affords a measure of, or, at least, furnishes the data for ascertaining the fair letting value. This is so far from being the case, that it may be stated that the principle adopted as the basis of the public valuation of Ireland is *the opposite* of that which would be needed for an estimate of value for the purposes of the Land Act of 1870. The farmer, as a general rule (subject to some not very material deductions) estimates for the purpose of rating, "not the rent paid or contracted for, but the net income arising from rent, *assuming the buildings and their improvements to belong to, and be kept in repair by, the landlord.*"* The latter plainly prescribes that, for the purpose of estimating a fair rent, the interest of the landlord should be kept carefully distinct from that of the tenant, representing the good will and improvements. It is no doubt true that on estates where the proprietor has not demanded that periodical advance of rents on account of a general rise in prices, or other grounds, which is sanctioned by the Ulster custom, the actual rent may fall below the fair rent, and may thus suggest a higher proportional rate of purchase than the just standard of comparison would do. On the other hand, it is clear from the above considerations, that the public valuation affords no standard for comparing the rates at which the tenants and the public purchase. I believe, therefore, that the nearest approximation is

* *Returns of Local Taxation in Ireland for the year* 1869, by Dr. Hancock, pp. 18-19. The remarks of Dr. Hancock, pp. 18-21, should be studied. I quote the following passage, which has a direct bearing on the above question (ib., 21):—

"As the Irish valuation excludes landlords' poor rates, which are included in rent, and includes tenants' improvements made before valuation, and in case of farm buildings and certain special improvements made seven years before valuation, as it is based on a fixed scale of prices, it is not a test of present fair letting value, nor does it differ from it or from actual rents in any fixed proportion, so as to allow an estimate to be made. As the Irish valuation is used in the Land Act of 1870 as a scale for determining the class to which tenants belong to be entitled to certain privileges, there is some risk of its being assumed to be a fair measure of rent. Some of the solutions proposed for the land question were founded upon this misapprehension, as it was assumed that in this valuation the determination of rent by valuation, instead of by competition, had been already successfully solved."

afforded by the actual rental, compared with the prices respectively given by the tenants and the public.

An embarrassing question has arisen on the construction of the 48th section, namely, whether the priority given to the Board of Works for advances by way of purchase extends to all charges, even those paramount to the interest of the tenant who purchases. It would seem that the question must be answered in the affirmative, although under the provisions of the Act (sections 44 and 45) the entire interest may be forfeited by the act of the tenant (see below, p. cxii.). An absolute priority over all charges is not unreasonable, in the case of loans for improvement, because it is assumed that the value of the land is thus proportionably increased. But it is inconsistent with justice to benefit the tenant at the expense of third parties, and the framers of the Act seem to have followed the Loan-Improvement Act blindly, without considering the substantial difference between the cases, and making suitable modifications.

It will have been observed (see above, p. 50) that the great majority of applications for loans by tenants were made in respect of public sales in the Landed Estates Court. Comparatively few were made on agreements for sale in the first instance with proprietors. This is easily intelligible, when we consider how heavy is the expense of making out titles, and the Act of 1870 required the agreement for sale to be in all cases carried out through the Landed Estates Court. In order, no doubt, to facilitate the procedure on such sales, the amending Act of 1872 (35 & 36 Vict., c. 32, sec. 1 (3)), authorises the Board of Works to dispense with the intervention of the Landed Estates Court. This plan might relieve the landlord of much expense, but the tenant would not possess a parliamentary title, and dealings with his purchased holding must involve the ordinary expense and delays incident to making out title. A step towards remedying the mischief might be found in the provisions of the Land Transfer Bill, introduced by the English Lord Chancellor in 1870, under which it was proposed that titles might be registered in such a way as not to bar existing claims, but so as to confer, *prospectively*, the simplicity and inexpensiveness of transfer

incident to the system of registration of title.* It was pointed out many years ago that a most material impediment to the purchase of their holdings by tenants lies in the want of proper facilities for transfers, and other dealings with land. Dr. Hancock made the following just remarks on this subject in a paper read before the Belfast Social Inquiry Society in 1852 :—†

"And here I must notice a very common error respecting the legislative changes necessary to allow of the existence of peasant proprietors in these kingdoms, which has led to the formation of the Freehold Land Societies, Building Societies, and Farmers' Estates Societies.

"The error to which I allude is that of supposing that the whole difficulty of creating peasant properties is the single act by which they are first purchased, and that if this difficulty be got over by the system of sales with the parliamentary titles, or by the system of associations, all will be well. But the real impediment to the existence of peasant properties is not so much in their creation as in their continuance. What is the value of a peasant property to a man if he cannot mortgage it to raise capital without ruinous expense ; if he cannot sell it, if he cannot divide it amongst his children, without the risk of an equity suit to administer assets or for partition. Now it is against the profitable use of small properties, when in existence, that our present system of laws respecting property in land operates. On the Continent, where peasant properties prevail, there is a totally different system of laws respecting the mortgaging, sale, and dispo-

* It is to be hoped that the entire question of registration of title and the working of the RECORD OF TITLE in Ireland will be investigated next session, in pursuance of the notice for an inquiry given by Sir Robert Torrens, M.P. The returns moved for by that gentleman, and ordered by the House of Commons to be printed, 28th May, 1872, show that the new system of conveyancing by registration of title is in its infancy in Ireland. Its importance, in connection with sales to tenants under the Land Act of 1870, cannot be overrated.

† The interest felt in the subject is shown by the circumstance, that the President and Senior Secretary of the Statistical and Social Inquiry Society of Ireland have allocated a portion of a sum of one hundred guineas placed at their disposal by the liberality of one of the Vice-Presidents (Mr. Alexander Thom), for reports on five questions in Irish Jurisprudence, to an essay "On the best arrangement for securing the local transfer and registry of land where small holders desire to have it locally registered."

sitions of property in land. All is there done by the prompt, cheap and effectual system of transfer in a public register. Until our system of registration be modified, so as to admit of that mode of dealing with small properties, the permanent existence of small properties will be impossible. The forces arising from the causes I have pointed out, making the proprietorship of land in small parcels less profitable than the proprietorship of land in large territories, will lead to the gradual absorption of the small estates. This effect has actually taken place in England to a very large extent during the past two centuries."

I have already noticed (see above, p. 52) some other suggestions for facilitating sales to tenants of their holdings.

In addition to the farmer-proprietary which is in course of formation under the Land Act of 1870, it is gratifying to observe the encouragement given to the tenants of ecclesiastical lands, by the liberal policy which the Irish Church Temporalities Commission are pursuing, under the provisions of the Irish Church Act, 1869.*

I have no doubt that the movement favorable to the conversion of tenant farmers into proprietors farming their own lands, thus inaugurated, will gain strength. On every ground, economic, political, and moral, it merits the encouragement of statesmen. It does so, especially, in a country like Ireland; conspicuous for absenteeism, and where both the traditionary practice, and the course of recent legislation, point to the actual cultivators as the natural source of all the improvements essential for modern agriculture, except those which demand co-operation and capital on a large scale. On the latter point multiplied testimonies show that the large proprietors are less and less disposed to make advances in money or materials to assist their tenants in improving their houses and farms, and that the condition of the labouring classes depends more and more upon the disposition and ability of the farmers to give them proper housing and continuous

* The advantages offered to tenants of ecclesiastical lands are fully explained in the two circulars issued by the Irish Church Temporalities Commissioners, dated the 8th June, 1871, and the 1st January, 1872. The legal position of such tenants is stated in *The Rights of Tenants of Ecclesiastical Lands under the Irish Church Act* (1869), by Charles H. Todd, LL.D., Q.C., Vicar-General of the Diocese of Derry and Raphoe. Dublin: Hodges, Foster & Co., Grafton-street.

employment. It may even be said that the action of the class of large proprietors in Ireland has of late years exercised a very injurious effect on the domestic *status* of the Irish labourers, since they have successfully obstructed the much needed poor-law reforms. I refer particularly to the enlargement of the area of rating so necessary in order to promote the building of cottages, and to check the artificial stimulus, which the present system gives to the migration of labourers to the towns.*

The question of "absenteeism" has received an important light from the returns recently made to Parliament of the number of landed proprietors in Ireland,† a summary of which is given on the opposite page.

It appears from these returns that more than one-half, both in acreage and in value, of the land of Ireland (10,928,760 acres out of 20,046,182 acres, and £5,204,937 out of £10,180,434) is in the hands of absentees, by which I understand proprietors who do not *habitually* reside on or near their properties. In addition to the number (5,589) who are classed as resident proprietors in the return, it may safely be assumed that the great majority of those who own less than 100 acres (5,982) live by and on the land. To the increase of this class, I believe, it is that we must look for the diminution of absenteeism and the growth of a social class in Ireland imbued with an attachment to order and animated by a love of progress.

HENRY DIX HUTTON.

September 23rd, 1872.

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* See the *Reports from Poor-Law Inspectors on the Wages of Agricultural Labourers in Ireland*, 1870.

† Returns moved for by Mr. Patrick Smith, M.P., and ordered by the House of Commons to be printed, 23rd April, 1872.

SUMMARY.

No. of Column in Return.	Classification of Proprietors.	Number of Proprietors.	Area in Statute Acres held by each Class.	Valuation.
			Statute Acres	£
1	Resident on, or near, the property . . .	5,589	8,880,549	4,718,497
2	Resident usually elsewhere in Ireland, and occasionally on the property	377	852,818	371,123
3	Resident elsewhere in Ireland . . .	4,465	4,362,446	2,128,220
4	Resident usually out of Ireland, but occasionally on the property .	180	1,368,347	610,072
5	Rarely, or never, resident in Ireland . .	1,443	3,145,514	1,538,071
6	Public or charitable institutions, or public companies . . .	161	584,327	234,678
7	Not ascertained . .	1,350	615,308	331,673
8	Proprietors of properties under 100 acres, unclassed . . .	5,982	236,873	257,100
	Total for Ireland .	19,547	20,046,182	10,180,434

Note.—This return was prepared in the year 1870, based on the valuation books of 1869, and is confined to the owners of property in the country or rural districts. The owners of all lands and buildings in cities, towns, and townships, have not been ascertained, and consequently are not included in this return.

The particulars regarding residence were obtained at the desire of the Irish Government by the Poor-law Inspectors, through personal inquiries from the clerks of unions, poor-rate collectors, and other persons possessing local knowledge of the facts.

PREFACE TO SECOND EDITION.

Two changes only of importance are made in the text of this edition. The first affects the comparison between customary and non-customary tenants; the second relates to the measure of compensation for disturbance.

HENRY DIX HUTTON.

10, Lower Mountjoy-street, Dublin,
February 1st, 1871.

PREFACE TO FIRST EDITION.

"Property is a *social* institution, both in its origin and its destination."
AUGUSTE COMTE.

THE main object of this work is neither praise nor criticism, but utility. It consists of two parts, an Introduction and a Practical Analysis. The former points out the leading principles of the Land Act of 1870, and submits the interpretation which the writer deems necessary to secure its just and beneficial operation. The latter will, it is hoped, assist both landed proprietors and tenant farmers to ascertain their privileges, claims, and obligations under the same Act, in reference to tenure and purchase.

I think it unreasonable to suppose that a complete and final settlement could be accomplished, by a single effort, of a problem which, like the IRISH LAND QUESTION, has during the last quarter of a century engaged the attention of six Prime Ministers and ten Governments. The Act of 1870 is unquestionably a great advance upon all previous governmental proposals, and is notably superior to the Bill of 1866. This was sanctioned by the Irish members who were the advanced Liberals of that date; but neither embraced Ulster tenant-right, nor recognised, even indirectly, possessory claims, nor protected the tenant's property in retrospective improvements. But this very superiority, the rapid result of an acknowledged political urgency, much more than of any well-grounded deliberate change in public opinion, of England more especially, itself rather strengthens the presumption that the Act of 1870, however surprising as an effort of *Imperial* legislation, does not completely meet the real wants and just requirements of Ireland. Such is, I believe, the fact, and I therefore think it right to call attention to some of the most serious defects and shortcomings of the measure.

I regret that the Act did not, in express terms, sweep away the modern infringements of Ulster tenant-right, instead of leaving this to judicial decision.

I find the following statement made by a speaker at the Conference of the Ulster Tenant-right Association, held in Belfast, as reported in the *Northern Star*, 5th March, 1870 :—

"The Rev. M'Auley Brown said he heard Mr. Gladstone's speech when introducing the Bill, and it convinced him that Mr. Gladstone meant well to the North as to the South. He had subsequently an interview with him on a cognate matter, and he pointed out to him what Ulster tenant-right *was, and how it was being infringed by landlords; how some landlords were forcing short leases on tenants in place of tenant-right*, and others were arbitrarily bringing down the Ulster custom to three years' rent as compensation for eviction. Mr. Gladstone was surprised to hear of such landlord infringements, and took a note of them. At the end of the interview *he said these were clear invasions of the Ulster custom, and he gave them to understand that his Bill would meet all these cases.* (*Applause.*) On reading the Bill, however, he (Mr. Brown) was surprised to find that it did not cover any of these cases, and he wrote to Mr. Gladstone since he returned to Ireland. He had received an answer from Mr. Gladstone, in which he expressed a hope that the tenant-farmers of Ulster would have sufficient courage to resist all such infringements *until they were protected by law.*" (Loud and prolonged cheering).

Unless the Courts can sweep away these, the customary tenants will be often dealt with very unequally, or reduced to the alternative of claiming as non-customary tenants (secs. 1 and 2). The future position of a tenant, so renouncing may be very disadvantageous. Thus the Ulster tenant-right embraces all kinds of improvements, and is not excluded by an ordinary lease; whereas, a non-customary tenant, under a lease for 31 years, made after the first of August, 1870, will have no claim for disturbance, and can only claim for improvements consisting of permanent buildings, reclamation of waste land, away-going crops, and tillage. If *within* the Province of Ulster, the tenant renouncing the custom cannot claim for the purchase money of good-will, even when paid with the landlord's consent (compare sec. 1 and sec. 2). Tenants, if valued above £50, and not exceeding £100 per annum, can only claim two years' rental for disturbance; while the claim for disturbance is entirely ex-

cluded for yearly tenancies existing on the 1st of August, 1870, and valued above £100 per annum.

The provision which sanctions the extinction of Ulster tenant-right by purchase (secs. 1 and 2) will be found full of difficulty. In some cases such extinctions have been attempted; but I am informed the custom always sprang up again. To extinguish partially a general custom will be still more difficult now that this is legalised. The only effectual mode of doing so will be, I think, the making of fee-farm grants.

The position of the non-customary tenant under the Act is altogether inferior to that occupied by the tenant who can claim under the genuine unrestricted Ulster tenant-right. This inferiority is broadly marked in three respects.

First, the Ulster custom, as legalised by the Act, is not based on *mere* compensation for disturbance or improvements, but recognises a sort of co-partnership in the tenant. The Act refuses to extend this principle to the non-customary tenant, and the practical difference thus established is very considerable. The mere complication of the provisions, and the difficulty of calculating beforehand what the non-customary tenant, if evicted, may expect, are serious disadvantages. The logical result of the co-proprietary view is that the tenant's interest is wholly unaffected by the particular cause of his quitting; his claim being unconditional, except so far as the landlord can establish a counter-claim for actual loss in arrears of rent or deterioration. But the Act goes far beyond this just limitation, since it annihilates the tenant's claim for disturbance in various cases; as when he subdivides or sublets, without consent (sec. 3; 2), or commits a breach of certain conditions (sec. 9). Even eviction for non-payment of rent (except in some very special cases, sec. 9) precludes a claim for disturbance; a disqualification the more remarkable, because it is precisely in cases of arrears for rent that the Ulster custom operates most beneficially for both parties. So the mere question of altering the terms of holding, as to rent or otherwise, when the landlord and tenant differ, may, if the Court agree with the view of the former, disentitle the latter to claim for disturbance (sec. 18). The difference also as to improvements is very great. The Ulster

custom practically embraces every class of improvements, and enables the tenant to obtain their full value of whatever sort they may be, and after any length of time, so far as they retain their worth. But the Act, though only as regards improvements made before the 1st of August, 1870, seems to indicate that the non-customary tenant's claim is liable to diminution by length of enjoyment, even in the case of the most permanent improvements (sec. 4, last paragraph); yet it may be fairly urged that where the rent paid has adequately represented the landlord's interest, the mere lapse of time should not diminish the tenant's claim for improvements. The Ulster tenant whose predecessors had erected the house and farm buildings, or reclaimed the land, can obtain whatever may be the actual value of the improvements as part of his good-will, after any lapse of time. The non-customary tenant, in the like case, may be told that the benefit of them has been enjoyed for a long period, say for sixty or a hundred years, and therefore he can claim nothing. It is, besides, plain that his position is wholly uncertain until the court has considered this question. The Act carries out the same distinction of principles between the Ulster and non-customary tenant, as regards improvements in other particulars (see sec. 4).

The difference between the Ulster and the non-customary tenant under the Act is equally striking in reference to the *proof* of improvements. The Ulster custom practically relieves the tenant of all responsibility on that head, and operates as a presumption that *he* has made *all* the improvements. The Act affirms the same *principle* for non-customary tenants, throwing on the landlord the onus of proving the contrary (sec. 5). But, as regards improvements made before the 1st of August, 1870, this just and beneficial provision is hampered with restrictions both inequitable and impolitic (sec. 5; 1, 2, 3, 4). In various cases, though the landlord is not relieved from the *claim* for such improvements, the tenant is embarrassed by the difficulty and expense of *proof*. Thus, the Ulster tenant is not put to any expense and trouble of proof in claiming the value of his good-will by reason of a previous sale of the property in the Landed Estates Court, or otherwise; or because he holds under a lease; or because the improvements were made twenty years before the 1st of August,

1870; or because his holding is valued at £100 per annum and upwards. But in all these cases, the Act, though leaving the claim unaffected, obliges the non-customary tenant to prove it.

Secondly, the Ulster custom places all classes of tenants, irrespective of the size or value of their holdings, on the same footing. The greater competition for small farms may increase the price of good-will for them; but the larger farms also reach a standard far exceeding the sum which the non-customary tenant can look for under the Act, in respect of disturbance and improvements conjoined. This appears clearly from the scale prescribed in cases of disturbance (sec. 3), especially if coupled with what I have pointed out above as to the claim for improvements, as diminished by the lapse of time (sec. 4, last paragraph). Moreover, holdings existing on the 1st of August, 1870, and valued above £100 per annum, will not entitle the holder to any compensation for disturbance. The great difference made apparently in favour of the smaller holdings may, not improbably, work very prejudically as an encouragement to their extinction and consolidation into larger holdings, which will confer a smaller claim for compensation;* particularly since tenants of holdings valued at £50 per annum and upwards can contract to forego all claims for compensation under the Act (sec. 12).

Thirdly, the Ulster custom, without excluding leases, has largely modified their operation,† the tenant's possessory right

* I find that Mr. W. G. Brooke, in his edition of the Land Act, takes this view. See note 7 to sec. 3, p. 11, and note 11 to sec. 4, p. 20.

† Of course a lease *may* expressly or even by implication exclude the custom. In fact, some recent cases have occurred in Ulster where tenants have thus been dealt with. The form of the lease adopted by Lord Dufferin, and in some cases actually executed by tenants on his estate, (See the Report of Tenant-right Conference, and the lease set out in extenso in the *Northern Star*, 5th March, 1870,) is a remarkable example of such efforts to abrogate the custom. If there were any purchase of the tenant-right, none such appears from the lease. The only consideration stated is the usual one of the rent and covenants. The effect of the contract is entirely to abrogate the *possessory* element of the Ulster custom, substituting for it a twenty-one years' lease, with a limited right to compensation for defined improvements, or, *at the option of the landlord*, a renewal for twenty-one years on the like terms, at the rent originally reserved or then payable. Even the security afforded by the twenty-one years' lease is seriously affected by clauses which absolutely determine it,

or good-will continuing after the expiration of the term. The non-customary tenant under the Act, who accepts a lease for thirty-one years or upwards, will lose all claim for disturbance. Leaseholds existing on the 1st of August, 1870, however short, will confer no claim for disturbance. The Ulster custom is unaffected by the source whence the disturbance comes. But non-customary tenancies, from year to year, existing on the 1st of August, 1870, will only entitle the holders to claim for disturbance when evicted by their *immediate* landlord. This excludes the very large class of tenants who were induced to reclaim mountainous and boggy land by the middleman, to whom leases were granted after the relaxation of the penal laws.

The great defect of the Act of 1870 is its pervading spirit of compromise between Irish facts and English ideas. This contradictory attitude of the Imperial Legislature is apparent both in the *end* sought and the *means* selected.

The framers of the measure saw and honestly endeavoured to meet the great evil of arbitrary evictions—this being the most obvious, and politically, the most productive of immediate mischief. But the difficulties connected not with possession, but with rent, were imperfectly understood; and the effort was, not to grapple with, but to elude them. The Government recoiled from any direct interference with the question of rent.

In the end the necessity was admitted, and concessions were made; but these were very partial, and I think inadequate. I do not believe that the majority of Irish tenants, even of the larger class, hold a position which can enable them to contract with the real freedom which presupposes a sufficient social equality. If this view be correct, it remains to be seen which are the most stubborn—Irish facts or imperial notions of what these *ought to be*.

The same fundamental defect pervades the entire structure of the Act, considered as means to the end chiefly sought—the practical security of the homes and industry of Irish tenant-farmers. The measure is essentially a compromise between the

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in case the tenant, should die intestate, assign, sublet, or mortgage without consent, or become bankrupt or insolvent, or even if he should be in arrear of rent for forty days.

Irish and the English agricultural tenure. The Irish system is characterised by *status* tenancy,—that is, a tenancy based on equitable notions embodied in custom, and tending towards fixity of tenure; and small farms. The English system, *as commonly* represented,* rests upon contract and large farms cultivated by capitalists. The fluctuation and incoherence of ideas thus produced are strongly marked in the Act.

On the first point of difference, the disinclination to admit frankly the existence of the Irish *status* tenure, its fitness and relative excellence for Ireland, is evinced in a variety of ways. Even the Ulster tenant-right is represented, not in its true light, as a *quasi* proprietary claim, a virtual co-partnership between the landlord and tenant, but as a mere system of compensation. In reference to the non-customary tenants this disposition is carried much farther, as will have been seen from the previous remarks, comparing the position of such holdings with that of Ulster tenants. The possessory claims, practically universal in Ireland, are limited to certain classes, and capri-

* I use this qualification, because, in truth, there exists in the English relation of landlord and tenant a powerful *status* element, which is partly protected by the law (agricultural customs), and still more by public opinion. The following remarks of Mr. James Howard, M.P., the eminent manufacturer of agricultural machines, addressed by him to the London Farmers' Club (meeting 2nd of May, 1870), are remarkable:—"Mr. Coussmaker raised a very important question, and that is, the right of a tenant to make improvements without the consent of his landlord, and he advocated that the landlord should not be called upon to make compensation for such improvements. In the interests of the public, it would be intolerable that the tenant should have no claim for compensation under those circumstances, because a landlord may be a very ignorant person. He may not only not know what is to the interest of his tenant, but he may be ignorant of his own interests; and what the public is most concerned with is, that he should not stand in the way of the general advancement of the country. It is one of the fundamental principles of law to afford protection to the weak against any undue exercise of power on the part of the strong; and I think, seeing the circumstances of this country, as alluded to by Mr. Masfen, where three tenants are looking for one farm, the State is perfectly justified, in the interest of the public, in stepping in to protect the interests of the tenants. I have often heard it remarked of late, that the rights of property are not held so sacred as they were in times past, and great evils are foreboded of that growing feeling. Now, I believe that the rights of property in this country were never better understood or more fully recognised than they are at present. Time was when it was an accepted doctrine in this country that a man

ciously varied. Even the claims of improvements are too much moulded on the English system of compensating for husbandry operations and minor ameliorations of the soil, The tendency throughout the Act is to make *status* the exception, contract the rule; and there is great reason to apprehend that it will give an impulse to a sort of written agreements, complicated in their nature, and calculated to operate oppressively for the tenant, injuriously to both parties. The Act shows equal traces of the second point of contrast between the Irish and the English systems—the size of farms. I have already pointed out the encouragement indirectly given to consolidation, by the marked difference between the compensation for disturbance respectively awarded to the smaller and larger classes of tenants, and by placing the right of free contract so low in the scale of value.

A few words may, therefore, be not undesirable in the interest of a more complete and final settlement of the Irish land question, in case events should prove the insufficiency of the present Act.

Writers and politicians* have advocated the solution of the

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had a right to do as he liked with his own; but I believe we have outgrown that, and the people of England now take a very much broader view of the rights of property. They believe that there are certain duties attaching to property, as well as rights to be exercised. If a man, or a mass of men, so manage or control their property that the full benefits are not derived from it by the community—if, for instance, a landlord stocks his tenants' farms with game, or avails himself of improvements made by a tenant without recognising the right of the tenant to the advantages which he has created himself, *or if for insufficient reasons he evicts the tenant from his holding*—I then say that the State is perfectly justified in stepping in, and putting the law in such a form that the tenants and the public shall not be damaged by such arbitrary course of conduct on the part of any owners of property. I believe, gentlemen, that nothing would tend more to the advancement of agriculture in this country, and that nothing would tend more to the benefit of the landlords, than a well-considered tenant-right; and I believe that the paper we have heard read to-night ("English Tenant-right," by Mr Corbett, Secretary to the Farmers' Club), and the discussion that has taken place, will hasten that desirable end."

* See more especially the essays of Judge Longfield, Mr. George Campbell, and Mr. John George MacCarthy, and the propositions put on the notice-paper of the House of Commons by Sir John Gray, M.P., and Mr. Morrison, M.P.

Irish land question by adopting FIXITY OF TENURE. By that term is commonly understood, in reference to Ireland, the transfer of the ownership of land to existing tenants in perpetuity, either absolutely, or with a qualified and limited right of resumption by the landlord in certain cases, subject to a rent, either fixed or liable to be adjusted from time to time, and with guarantees for good husbandry, and against sub-letting, I put aside objections to this course, which are merely of an *imperial* character; for all such, I conceive, should yield to considerations of justice and policy based on the history and actual condition of the relations of landlord and tenant in Ireland. Looking at the question, therefore, from an Irish point of view, I think the "fixity of tenure" principle is liable to very serious difficulties, both in theory and practice. It would almost certainly deprive the landlord of the motive and power to make that larger and more extensive class of estate-improvements which naturally devolve on him, and are often—as for example, arterial drainage—essential to the making of farm improvements by the occupiers. If such a plan were adopted, the transfer of the land must almost necessarily be compensated by re-valuation and raising of rents, which would meet with strong resistance among the tenantry. Moreover, fixity of tenure. even in a qualified shape, is not, as I conceive, supported by the analogy of the Ulster custom.*

The legalisation of the ULSTER TENANT-RIGHT CUSTOM, within and without that province, so far as this is sanctioned by the Act, leaves untouched the vast number of holdings which do not, with strictness, fall under that tenure, though its germ unquestionably exists in the ideas and practice of the farmers. The difference amounts to little more than this, that the tenant's possessory interest and right of transmission is recognised and systematised in Ulster, while in the rest of Ireland the landlords have, very generally, ignored and dis-

* I agree with Mr. Morier (*Cobden Club Essays*, p. 292) in holding that the Prussian legislation of Stein had a much stronger *legal* justification than Irish circumstances could have afforded, though this difference was, I think, in a great measure owing to the solicitude always felt by the Government of Prussia for the peasantry, and the opposite tendencies, in former times, of the ruling powers and courts of justice in Ireland.

countenanced it. I believe that, excepting the cases—comparatively few, and chiefly recent*—of genuine commercial dealings for farms, the *real* tenure throughout Ireland is based on *status*, not on contract; a state of things quite intelligible, and readily justifiable to any one who has studied Irish history, and the actual relations of landlord and tenant. It has been said that customs must grow, and cannot be improvised. That no doubt is true; but the fact is that many usages of local growth have been legalised and generalised.† When, then, we find that southern Irish landowners *have* deliberately sanctioned and systematically introduced on the their estates the Ulster custom, as based on the recognition of the tenants' interest, subject to a fair rent, with right of transmission, it is difficult to see why that ancient custom—freed, in express terms, from all modern encroachments—could not have been legally sanctioned and extended to the entire of Ireland. That, I incline to think, if accompanied by the simple and *non-legal* machinery of Government arbitration—as long practically worked under the Railway Purchase of Land Acts—might have been found the most complete, and in the long run, the least difficult and trying solution of the Irish land problem.

I believe that the policy of recognising the possessory and industrial interest of the tenant—his good-will—as a property having a marketable interest, limited only by the landlord's just claim to a fair rent, would be, for the reason above stated, the wisest and most advantageous for all parties. The Act tends in this direction, not only by sanctioning such sales when made with the landlord's consent,‡ but in the encou-

* Leases in Ireland have been usually granted for political purposes, or to make the tenant feel secure, but not on any commercial principle. They seldom form an exception to the above remark.

† For example, the system of "crossed cheques" was at first a merely local practice, not even amounting to a legal usage. It is now embodied in a general Act for the United Kingdom.

‡ Sec. 7. This consent may be express or *implied*. I must, however, observe, that the 13th section (introduced in the House of Lords) may interfere materially with the operation of the 7th section; since, in all cases where rent is in arrear the former practically enables the landlord to require an express assent to any assignment of the holding.

ragement indirectly given to the sale of tenants' improvements, by absolving the landlord who permits this transfer, in the case of a tenant who quits *voluntarily*, from any personal claim for compensation on that head. I trust that no ill-founded apprehensions of danger or lingering feudal prejudices may prevent Irish landed proprietors from adopting a course already sanctioned by the successful practice of distinguished members of their own class in every part of Ireland. The Act is most carefully framed with a view to relieve landlords from *direct* claims by the tenant, except where the latter is dispossessed or his industry appropriated by the act of the landowner for his own satisfaction or benefit. It is worthy of observation that the legal claims which English tenants can enforce under their agricultural customs, often to very large amounts, are in practice seldom made directly against their landlords, because these allow the outgoing tenant to arrange for the price with the incoming tenant. The Irish Land Act of 1870 is framed exactly in this spirit; and landlords, if they think fit to follow the example set in this respect in England, can free themselves from expensive claims and troublesome litigation, by permitting the sale of the tenant's interest in his holding.

Whatever, therefore, may be the defects and shortcomings of the Act, I believe that it must be productive of much good, *provided* Irish landowners, as a whole, are determined to work it fairly and according to the spirit of the measure, as one intended to secure both the homes and the industry of the tenant farmers in Ireland.

Consistently with this view, an immense field remains for the exertions of landowners, which they alone can occupy. On their intelligent devotedness mainly depend the important operations of arterial drainage, whether extending over entire districts, or merely embracing individual estates. On them also mainly hangs the condition of the agricultural labourer.* The Act of 1870 contains few provisions† of moment effecting this important class. The improvement of agriculture should, no doubt, afford them the prospect of more continuous employment and better wages. But their homes, there is too

* There were 478,916 of these in Ireland by the Census of 1861.

† See sec. 10—"Land required by landlord for labourers' cottages."

much reason to believe, are very generally in a deplorable state.* I believe that, in connection with this, the present system of Poor Law taxation, as based on electoral districts, and not (as now in England) on union rates, calls for urgent revision. But direct efforts by the landlords are essential for securing the comfort and contentment of the agricultural labourers. A recent Act enables limited owners to charge their estates for building mansions to the extent of two years' rental (33 & 34 Vict., c. 56). The extension of this Act to many other objects, including the erection of labourers' cottages, is justified by the analogy of the "Montgomery Act" for Scotland, and seems called for by the state of Ireland.

The real utility of such measures, however, presupposes the frank acceptance by the Irish landowners of the *spirit* of the Act of 1870. That Act ostensibly permits owners to resume the land on paying to the tenants compensation for improvements or disturbance, or for both together. But its true object is to discourage eviction, to check hasty consolidation. Its efficacy on these heads must depend partly on the liberality and vigour of the courts, but still more on the growth and spread of just, liberal, and humane views among Irish landowners. Their tone and practice has been too much modelled on what may be called the "English system"—large farms and capitalist farmers,—and the events of the last quarter of a century in Ireland have tended to increase this disposition. But the discussions of the current year have, in part at least, shown its mistake. They have still more clearly proved that the "English system" is not one, as a whole, suited to Ireland. Not a few Irish landlords recognise this, and it may be hoped that their precept and example, fortified by the changes in the law, will have a large effect in forming a sound public opinion, and thus in securing the legitimate influence which belongs to wealth and social position, when these are employed in promoting the good of the people.

I have no doubt that the combined effect of the claims which the Act sanctions for disturbance and improvements, when known to the tenantry and appreciated by them, must

* See the Reports of Poor Law Inspectors on the Wages of Agricultural Labourers in Ireland, 1870.

have a great and beneficial effect. They tend to create a barrier against arbitrary eviction, and to inspire a confidence in the tenants of obtaining the reward of their capital and industry, honestly and skilfully applied. The discouragement to enterprise and labour among the Irish tenantry, created or fostered by insecurity, is testified by writers of high authority and large experience.* It is right, therefore, that they should avail themselves of the new position in which the law now places them. No protecting enactments, or penalty on eviction, can enable Irish farmers, especially the smaller class of farmers, to hold their ground, unless they strenuously exert themselves to improve their holdings. That a large field for such exertions exists admits of no doubt. In support of this view, I cannot do better than to quote some extracts, showing the opinions of an eminent Irish agriculturist† as to the actual condition of Irish farmers, viz. :—

TILLAGE.

"It is not too much to say that by deep, early, and good tillage the value of the produce of every acre of arable land in Ireland could, on an average, be increased by at least £1. As this could be done without extra expense, and as there are five and a-half millions acres in tillage, the wealth of the country could thus be annually increased by five and a-half millions sterling."

MANURES.

"The author of this treatise has estimated elsewhere, that upwards of 80,000,000 lbs. of phosphoric acid are annually removed out of the soil of Ireland in the bones of animals exported, in the ejecta of man that go to waste, &c. : as the phosphoric acid in manure costs 4d. per lb., this represents an enormous loss.

"When, in addition to this drain upon the land, it is borne in mind that the collection and preservation of home-made manures are sadly neglected, and that the soil is badly tilled, the small return of our crops need excite no surprise ; the wonder is, that it is not smaller.

"The manure made in the 'bawns' of thousands of the small farmers of Ireland, is not what is here called farm-yard manure at all, but compost of clay. They cart a quantity of clay from the headlands or old ditches, or from trenches cut in the fields, throw it into the yards in front of their doors ; on this is poured kitchen refuse. By being kept in the yard for

* See the remarks of Judge Longfield, *Cobden Club Papers*, 1st Essay.

† *Handy Book for Small Farm Management*, by Thomas Baldwin, Superintendent of the Agricultural Department of National Education, 1870.

some time, the clay 'sours,' and a little of its mineral constituents becomes liberated. . . . It is not quite easy to calculate accurately the loss annually incurred in this way by Irish farmers. We may, however, guess at the truth in this way:—There are grown every year about 1,500,000 acres of potatoes and roots; each acre of these gets, one with another, at least ten tons of farm-yard manure, and each ton of this manure is not within a sixpence of the value it might be if properly made; this gives a gross loss of £375,000 a-year. The loss to the farmer is, in reality, far greater than this; for deficiency in tillage or manure may reduce the crop one-half. We feel fully satisfied the deficiency of crops in Ireland, arising from bad manure, amounts to several millions sterling yearly."

Rotation of Crops.

"There are many other rotations in use, but those which we have described are the most common. The adoption of them would effect a vast improvement in the circumstances of the small farmers of Ireland, very few of whom adopt any fixed system of cropping. The prevailing system on those small farms is to raise a crop of potatoes on the lea, and grow one crop of grain after another as long as the land will bear it, and then to 'rest' the land by letting it run to grass for some years, after which the same round of cropping is gone over again. This is an exhausting and ruinous system. It goes on the principle of starving the crop and exhausting the land, and ends by exhausting the scanty capital of the small farmer."

Grain Crops.

"It is not too much to say, that if the land of the country was well farmed, a saving of at least two and a-half stones of seed could be effected on each of the two millions and a-quarter acres under grain; and this represents about 32,000 tons of grain, worth more than a quarter of a million sterling. We must not attempt to effect this saving, however, except where the land has been drained and well tilled. More seed is required under bad than good farming. Some of the seed is killed by frost on undrained or wet land; and when the soil is not properly prepared, a great deal is buried so deep that it never grows at all.

"On the other hand, extremely thin seeding, which makes the harvest late, is unsuited to our climate.

"The quantity of wheat and oats annually lost in Ireland by not cutting these crops in time is fully equal to the seed sown; and this, for the two millions of acres under these two crops, fully amounts to one million sterling!

"This is a national disgrace, which can only be removed by diffusing agricultural knowledge among the farmers of the country."

Grasses.

"We have now to treat of the natural or true grasses, which, as permanent pasture and meadow, occupy about one-half the land of Ireland. There is no class of plants so imperfectly cultivated in these countries.

A high authority has declared, that the grass lands of England are a disgrace to British agriculturists; and it may be safely stated that, by means within the reach of all farmers, the average yield of the grass lands of Ireland could be increased, by the application of skill and care, by at least 10s. an acre, and as we have in round numbers ten millions of acres in grass, this would give an annual increase of £5,000,000 to the wealth of the country. The unproductive state of our grass lands arises from several causes, the principal of which are, first, ignorance (on the part of farmers) of the proper grasses to grow in given situations; second, want of care and skill in laying down the land with grasses; and third, want of care and attention in weeding, and, when necessary, manuring the grasses.

"There is not, perhaps, in Irish small-farm management a more glaring defect, or one calling more for immediate improvement, than the mode of producing grass. Sometimes the farmer does not sow any seeds at all, but allows the land to cover itself with whatever grasses it throws up naturally. Again, thousands of small farmers allow land to run to grass when it is reduced by corn crops and mismanagement to such a state of poverty that it will no longer yield even a middling crop of grain. The land is then allowed to rest itself in grass. This is a ruinous and miserable system."

Haymaking.

"The hay crop suffers deterioration chiefly from the following causes:—first, rain; second, loss of fragrance by fermentation; third, loss of colouring matter; fourth, it is allowed to remain in the field until a portion of it is rotted away; and this again involves loss of aftergrass. . . . If we unite all the foregoing sources, the loss annually sustained in this country is enormous. On an average for all Ireland, it is not under 20 per cent., or a fifth of the annual value of the crop. We have about 1,500,000 acres under meadow land in Ireland, the average produce of which is about two tons per acre. The total hay produced, therefore, is 3,000,000 tons; the value of which, in round numbers, amounts to about £7,500,000; and of this sum one-fifth, or £1,500,000, is lost by bad management."

Live Stock.

"The quality of the live stock in Ireland has improved immensely of late years. The improvement is perceptible everywhere. Still, it is notorious that it has not become as general as it ought, and that there are thousands of small farms in the country the live stock on which is unprofitable. There are in Ireland more than half a million of horses, more than three and a-half millions of cattle, nearly five millions of sheep, and nearly a million of pigs. The gross value of the whole of these may be put down at about forty millions sterling. Some of the most intelligent farmers in the country think that, by carrying out improved modes of breeding and management, this total could be increased twenty per cent. in five years. As the greatest improvement is to be effected on the small holdings, it follows that the greater portion of this increased wealth would

accrue to the small farmers of the country. The first great means of effecting this object is to diffuse among the people correct notions on the means of improving the stock.

"We slaughter annually in Ireland about half a million of beasts, and export to Great Britain about a third of a million. A large number of them are sent to market in very good condition by the graziers, large farmers, and landed gentry of Ireland. It is well known, however, to those who attend the Dublin and provincial markets, or witness the shipments of cattle from the Irish ports, that a great many beasts are sold either in a half-finished state, or sent to England as stores. The loss on the former is very considerable; for, as every practical man knows, beasts pay better for their keep in the more advanced than in the early stage of fattening. And again, as our climate is on the whole better adapted for roots than that of England, we see no reason why a large number of the store cattle now exported should not be fattened in Ireland. It would increase the profit of the farmer, and the gross produce of the country; the large quantity of valuable manure obtained would leave the land in better condition for other crops, and the labouring class would receive more employment.

"The farmers who sell their cattle say stall-feeding does not pay. It must be admitted that the slovenly system of stall-feeding which many people follow cannot pay; it is also true that the price of store cattle is sometimes so high as to render it difficult to fatten them profitably; but it may be safely assumed that the intelligent farmers of England and Scotland who fatten a great many of our Irish cattle, do not lose by the system. We have seen Irish cattle in the stalls of English farmers who pay a higher rent than is paid for the same class of land in Ireland."

Butter Making.

"By a good system of dairy management, all the butter produced in the country might rank first or second, and never should be lower than third. It is difficult to arrive at an accurate measure of the improvement that may be effected in this branch of industry; but we are quite safe in saying that if the dairy were well managed in all parts of Ireland, it would increase the average value of the butter produced at least £1 a cwt., and add to the wealth of the country at least £1,000,000 a-year. The wide field for improvement is shown by the quotations of the principal markets. At Cork, for example, the butter is divided into six classes; as we write, the price of the first is 150s., and of the sixth only 95s. a cwt."

Cheese Making.

"There are two reasons why cheese making has not been extensively adopted in this country. In the first place the majority of the farmers require to convert their produce into money as quickly as possible. Butter can be sold as soon as it is made, while cheese cannot be sent to market until several months have elapsed. Double Gloucester cheese, for instance, requires nine or ten months to bring it to maturity. In the next

place, the manufacture of good cheese requires more dairy accommodation than the bulk of Irish farmers can command."

Sheep.

"The average value of the sheep in Ireland could be increased 10s. a head in a short time, by bestowing proper attention on their breeding, feeding, and general management; and as there are about 4,800,000 sheep in the country, this would increase our wealth to the amount of £2,400,000.

"It is in regard to the sheep in the hands of the small farmers that the greatest improvement remains to be effected. They are frequently ill-shaped, require three or four years to come to market, and do not weigh as heavily as well-bred and well-fed sheep at the age of fifteen or sixteen months. Food is thus wasted, the farmer's capital is turned slowly, and the profit is extremely small, or, as sometimes happens, there is no profit at all."

Farm-Horses.

"There are in Ireland upwards of 500,000 horses, of which two-thirds are used for agricultural purposes. A large proportion of these do not give an adequate amount of work for the food they consume. They are badly shaped, and ill-adapted for farm work. Little or no care is bestowed on their breeding, and their feeding, especially while young, is also neglected."

Poultry.

"England is now importing eggs and poultry from the Continent at the rate of close on a million and a quarter sterling per annum. Of eggs the imports, one day with another, are upwards of a million a day!

"Ireland, with its half a million of farmers, could supply this demand, and at the same time increase the quantity for home use."

Drainage.

"It may be noted as a rule, that all peaty and clay soils are improved by thorough drainage. All grass lands that contain rushes, sedges, and other water plants are also in want of this improvement. We may feel certain, too, that grass lands which have here and there patches of a brownish or unhealthy green through them, contain too much water. We have in Ireland at least 6,000,000 acres of land in need of drainage; this work could be effected at a cost of £5 an acre, which would give a rentcharge of 5s. an acre; but the increased value of the land, consequent on drainage, would be at least 10s. an acre, and on hundreds of thousands of acres of bog and clay, it would be fully £1 an acre after a few years. Thus the value of the land of the country would be increased by upwards of £3,000,000 a year.

"Many persons will ask, Where is all the capital to execute this work to come from? We answer that the bulk of it is in the labour of the people. The farming classes of Ireland have a great deal of labour in their families, which could be most usefully employed at draining their farms at opportune seasons, when other works are not pressing."

Reclamation of Land.

"The most abundant class of soils in Ireland in want of improvement is our bog land. In 1841 it was estimated that there were 8,000,000 acres of this kind of land capable of being improved; and at the present moment the area is not less than 3,000,000 acres.

Farm-Houses and Offices.

"In this chapter we do not propose to treat of the dwellings or offices required on large farms, but simply confine ourselves to the wants of the small farmers and labourers, who, in the backward parts of the country, such as in the south and west, live in miserable hovels unfit for human beings, and have no farm offices deserving the name.

"Many of the landed gentry of Ireland have made most laudable exertions to improve the dwellings of the labourers and farmers; the Government, too, has lent money for this purpose, but as yet their combined efforts have had little influence on the mass of the people, and chiefly because the plans hitherto devised had been on too costly a scale.

"Most of the cottages erected by the landed gentry cost £90 a piece, and for these labourers cannot afford to give a rent which would pay for their erection.

"The Board of Works do not lend any money for the erection of dwellings or offices on farms of less than £50 annual rent.

"We know a very comfortable cottage of this kind built of mud walls, with strong upright posts of larch trees, chimney of stone and mortar, thick coat of thatch, and with boarded floor, put up at an outlay for timber, mason, thatcher, and a kitchen grate, of £6 6s. 6d. We do not advocate mud walls or straw for thatch for those who can afford more costly materials, but in every effort to improve the condition of a people, regard must be had to their circumstances; and at present the small farmers most in want of decent houses cannot afford to build them with stone, mortar, and slate.

"The site of every farm-house and offices should be well drained, dámp being most pernicious to man and beast. Pools of water, and above all, pools of mixed liquid manure and water, so commonly seen about the dwellings and offices of Irish farmers, are most injurious. We know a farmer who, in 1867, lost cattle to the value of £500 by lung disease, which was brought on by want of proper drainage, and neglect of the simple laws of health."

It is therefore plain that much remains to be done before Irish agriculture can reach its fair level of perfection; and the security afforded by the Act of 1870 is, I conceive, such as justifies the friends of the Irish farmer in calling on him to use his utmost exertions.

I have no doubt that the millions of deposits, of which so large a portion are contributed by Irish farmers, can now be

safely, and far more profitably, expended by them upon their houses, their farm buildings, with all the appliances and aids of husbandry. It may however, be a matter requiring serious consideration, whether the system of loans by the Board of Works should not now be reconstructed, so as to embrace at least a large proportion of the occupiers of land in Ireland. Such a change would be entirely in the spirit of the Act, which proceeds on the assumption that Irish tenants have made, and still more will make, all those classes of improvements that transform mere land into the farm, and associate prosperous agriculture with happy homes for the tenant-farmers of Ireland.

The practical efficacy of the second part of the Act (Sales to Tenants) will largely depend on the spirit in which it is carried out by the BOARD OF WORKS and the LANDED ESTATES COURT. The Board of Works, so far as regards loans for agricultural improvements, has hitherto shown little disposition to deal liberally with tenant-farmers. It is to be hoped that, both on this head and in organising the new loan system, a more enlightened and progressive spirit may be manifested. I must also express my conviction that the Landed Estates Court, both in its principles and practice, has greatly fallen off from the largeness and vigour of its earlier days, especially the first ten years of its working under the original Act, when called the Incumbered Estates Court. A state of things has been introduced and sprung up urgently calling for reform, preceded by an inquiry. This should also embrace the department of the Court known as the RECORD OF TITLE OFFICE. The system of recording parliamentary titles is of special importance for purchasers of properties so small as those of tenant-farmers must be. The system, I think, demands a careful revision, and ought to be made both compulsory and local.

10, Lower Mountjoy-street, Dublin,
14th October, 1870.

HANDY BOOK

OF

FARM TENURE AND PURCHASE.

INTRODUCTION.

The Land Act of 1870 is a great step in the right direction. Abandoning a purely English system and economic metaphysics, it largely follows the best Irish traditions, and adopts ideas sanctioned by foreign and colonial experience. The tenure clauses evince the first, the purchase clauses the second, of these tendencies. The reform thus possesses an historic character—resting on the past, to better the present, and to prepare the future. The changes made in the law of landlord and tenant go beyond the proposals of Sharman Crawford, O'Connell, and Sir Joseph Napier. Mr. Crawford's Bill of 1848, which was sanctioned by the Irish Tenant League of 1852, was based on the Ulster Tenant-right, already recognised in railway valuations under the Land-Clauses Act (8 Vict., c. 18, sec. 81). The legal sanction of the presumption that improvements had been made by the tenants, in accordance with the statement of the Devon Commissioners' Report (1845), was advocated by Mr. O'Connell. The Bill of Sir Joseph Napier (1853) affirmed, in principle, the tenants property in his improvements to a limited extent, both retrospectively and prospectively. These fundamental points are now made the law of the land; the first unreservedly, the second and third with reservations, which diminish but do not destroy their value. The facilities which the Act affords towards the purchase of their farms by the occupiers are likewise justified by experience, partial but encouraging, in Ireland; still more by the results of a farmer-proprietary in every Continental country, in the United States, the British colonies, and India.

LAND TENURE.

Ulster Tenant-Right Custom.

The Act of 1870 begins by legalising the "Ulster Tenant-right." This custom is the Irish counterpart of the English copyhold.* It does not go so far as that system, which practically confers fixity of tenure at an ascertained rent. Had the Irish bench in former times favoured popular claims as the English judges did, the result would, I doubt not, have been the same in both countries. The copyholder and the Ulster farmer are alike *status* tenants, that is, tenants, the nature and conditions of whose tenure are determined not by contract, but by equitable principles which have acquired the force of customary law. Equity embodied in custom is the foundation of both tenures. The copyholder, originally a serf, next a tenant-at-will, was at last enabled, under judicial decisions, to control the landlord's power by a custom which prohibited eviction and regulated the conditions of tenure. The Ulster tenure clearly tended in that direction, for it embraces not only improvements but possession. The "good-will" comprises both, and in effect makes the tenant a co-proprietor with the landlord. He owns, under the custom, a saleable interest in his holding. The custom, if judicially favoured as in England, would probably have ended in fixity of tenure. Unsupported, and in more recent times infringed by landlords, it stopped short of that. The limitations attempted were of various kinds. The landowners claimed the right of resuming possession for special purposes; sought to impose a maximum on the price of tenant-right; and not unfrequently raised the rent beyond the fair customary value. These innovations have no doubt impaired, but by no means destroyed the custom, which ought henceforth, under the protection of the law, to recover its pristine vigour and ancient boundaries.

* The Zemindaree tenure of the Bengal ryots affords another analogy, in one respect even more complete, since under the system (as established by Act X. of 1859, and explained by the judgment in the great "Rent Case") the rent is not fixed, but variable, tenant and landlord sharing in the increase of value produced by general causes. See the writer's essay, *Ancient Tenures and Modern Land-Legislation in British India*, 1870.

The Ulster tenant-right must be considered both in its practical and legal aspects.

The true and universal custom of Ulster, I conceive, is this. The tenant, whether yearly or leasehold, enjoys an occupation-right or possessory interest, capable of being assigned or otherwise transmitted. The landlord is entitled to approve of the incoming tenant, and to receive arrears of rent, and other claims, out of the purchase money. He may resume possession on notice to quit, or expiration of the lease, but he must pay the tenant the value of his interest. The rent is a *fair* customary rent regulated by the practice of the neighbourhood, and can only be raised when and so far as increase in value is occasioned by change in prices, or other general causes independent of any improvements made by the tenant. Any other augmentation of rent is plainly inconsistent with the custom, since it must, *pro tanto*, diminish the customary market value of the tenant-right. I believe the above to be a correct statement of the *essential* characteristics of the ancient and genuine custom as it still subsists on the estates of the best landlords in counties—such as Down—where it has been respected and fostered on the grounds of justice and good policy between owners and occupiers.

Next, as to the legal aspects of the Ulster tenant-right under the Act of 1870. It fulfils the three principal conditions which the English law demands.

First. The Ulster custom is an ancient custom. The proof, however, need not go beyond twenty years, which, in the absence of proof to the contrary, warrants the presumption of its immemorial existence. I deem it of the utmost importance that the custom shall be upheld as an ancient right, and not a mere modern practice.* The latter view must tend to let in

* I regret to be obliged to express my entire dissent from the view taken by Mr. W. O'Connor Morris in his useful edition of the Irish Land Act, 1870, (p. 47). The English decisions which favour the usages of modern agriculture, giving to outgoing tenants compensation for manures, tillage, drainage, etc., are no doubt worthy of consideration. But I am unable to understand how these usages can be placed in the same category with a custom which gives to the tenant "a quasi-proprietary right," a "concurrent interest" with the landlord (ib. p. 36). I must add my conviction that the *status* of the tenant under the Act of 1870 is not regulated according to law by his *old* legal tenure (*i. e.* as holding merely

and sanction all those comparatively recent innovations and restrictions by which landlords have attempted to restrict and practically abrogate the tenant-right. The former view will, I trust and believe, assist the courts to vindicate the just and benevolent intentions of the Legislature, by sustaining the ancient custom, freeing it as far as possible from all such limitations as are at variance with its essence and unduly limit the tenant's interest in his farm—in other words, the full customary market-price he can get for that interest.

Secondly. The Ulster-custom is not a mere estate-regulation, or even a district-usage, but a general custom. It extends (with rare exceptions, and those of modern origin) over the entire province of Ulster. The Act,* I submit, clearly recognises this fact. It refers no doubt to usages, but that, I apprehend, merely means local variations so far as these are not inconsistent with the fundamental and essential features of *the* Ulster custom. The tenants of Donegal are, I submit, entitled to refer to the evidence of the genuine and ancient custom afforded to this day by many estates in Down and other countries of the PROVINCE, which is clearly designated by the Act as the peculiar sphere and original limit of the institution.

In the absence of an express *contract*, limiting or abolishing the ancient tenant-right, I contend that all innovations by way of mere notice or estate-regulations are simply null and void, so far as they conflict with the ancient and genuine custom. The Ulster holding, whether yearly or by lease, confers the *status* of a continuing tenure.† That is now recognised by the

by lease or from year to year, ib. p. 36), but by the *whole* relations which constitute the ULSTER TENANT-RIGHT CUSTOM. It also strikes me that when the legislature emphatically affirms and ratifies a wide spread practice, it will be difficult to hold that, "if it is a custom, (*i. e.* ancient) it is to be construed strictly; no inferences are to made in its favour" (ib. p. 47). I earnestly hope that the Act of 1870 may not, on this and other points, be construed in a spirit which can only nullify its provisions and defeat its policy.

* See especially the second section, which makes "*The* Ulster tenant-right custom" the standard of comparison with extra-Ulster usages which *in all essential particulars* correspond therewith.

† The Act manifestly aims at recognising this for the whole of Ireland, as far as possible (see secs. 2, 11).

law, and the courts should draw from it every fair inference favourable to the customary tenant. The Ulster custom, like every other agricultural custom, ancient or modern, results from *the dealings of the tenants.* The landlord has no *active* share in creating the custom; and once an ancient custom is proved to exist, he cannot derogate from it by any *ex parte* proceeding. The tenant enters under the custom, and is entitled to the benefit of it. This proposition has special importance with reference to the efforts of landlords to limit the market price of the Ulster tenant-right. I conceive all such attempts are infringements of the ancient custom, and should be declared null and void. The same thing holds good with reference to the raising of rent, which is obviously both the result and the cause of arbitrary limitations of the value of the tenant's interest. The ancient custom unquestionably is violated by raising the rent beyond the fair customary rate. The great disparity between the market prices of tenant-right in the different counties of Ulster is well-known. It arises in part, no doubt, from the real difference in the value of the farms and farm improvements. But the main cause is artificial, and proceeds from the arbitrary regulations, above referred to, sought to be imposed by landlords, but most of all from the inequitable raising of rent beyond what the fair customary standard would have warranted. Of all the gradual and recent infractions of Ulster tenant-right which have caused so much indignation and discontent, "not loud but deep," in that province, this of raising the rent has been the most serious; and unless the Act, backed by the interpretation of the courts, stops these proceedings, the legalisation of the Ulster custom will have accomplished very little for the tenant.

Thirdly. The Ulster custom is reasonable. I premise two principles of English law which should be borne in mind when we consider this proposition. The courts lean to support an ancient custom, or even a modern usage, and the *onus* of showing that it is *un*-reasonable lies on the objector. Again, a custom is not unreasonable because it may produce what seems hard in an isolated case, or may, under particular circumstances, even cause hardship. The judicial mind looks to its general bearings, and regards its influence in the long run and on the public good. Tried by those tests, the modern

tenant-right usages of agriculture in England, nay more, her ancient customary tenure known as copyhold, have been upheld. The same tests may without fear be applied to the Ulster tenant-right.

We have clear proof that a tenant-right, restricted only by the landlord's claim to enjoy a fair customary rent—capable, therefore, of being raised within proper limits—does not encroach upon the landlord's property, or diminish his just revenue. Mr. William Steuart Trench, the well-known and extensive land agent, states,* "I think the land in the North of Ireland with which I am acquainted is let *higher* at this moment, *in proportion to its intrinsic value*, notwithstanding the tenant-right which exists there, than the land in other counties which I have had to deal with." There is, however, one word in this statement which requires correction. "Notwithstanding" should be expunged, and "by reason of" inserted in its place. The idea implied by the language of Mr. Trench is that which has so long been the bane of Ireland, namely, that what benefits the tenant injures the landlord. The reverse is the truth, and Ulster tenant-right in its best form proves this. The landlords in that province obtain a higher rental for their estates, *because* the tenants are prosperous; and the tenants prosper, mainly, *because* they possess the security which encourages them to augment both the extent and productiveness of the land under cultivation. Owing to these exertions, and the general prosperity of that part of the country, an increase of wealth is created, which the landlord and tenant share between them, as co-partners on equitable terms.

Again, it is demonstrable that the Ulster custom has not checked such a gradual increase in the size of farms as the operation of general causes in society—for example, the diminution of domestic weaving, or improvements in agriculture—naturally and unavoidably brings about. Mr. Filgate, for many years agent on the Downshire estates, testifies to this:†

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* *Evidence before the Lords' Committee on the Tenure (Ireland) Bill*, 1870.

† *Evidence before the Lords' Committee on the Tenure (Ireland) Bill*, 1867.

"It is a curious circumstance that, taking Lord Downshire's estate in the part which I have immediately under my own management, and comparing what has been going on in the way of consolidation for the last fourteen or fifteen years, the very same thing has been occurring there, *where we have no ejectments, and where we have literally no arrears of rent*, as has been going on in the South and West. The turning point is very much the same. The farms below fifteen acres have decreased, and farms above fifteen acres have increased." The reason for this extraordinary agreement in the alteration of the size of farms, accompanied by the equally remarkable difference between the social state of the North and that of the rest of Ireland, is not difficult to discover. In the former case, the tenant-right payments induced the peaceable relinquishments of farms no longer profitable to their holders, since these were thus saved from want and degradation, and enabled to emigrate with their families. In the latter case, the tenants were simply reduced to the condition of agricultural labourers, ill-paid and badly housed, with no prospect in sickness, destitution, or old age, except the poor-house.

The most plausible objection against the Ulster tenant-right custom* is its alleged tendency to encroach on the tenant's agricultural capital. The tenant, however, obtains real value; an investment bearing no doubt a small interest—about three per cent.—but affording practical security against eviction and for industry. Besides, the *want* of legal sanction for the custom largely produced the alleged mischief; since it prevented the tenant from borrowing—as is commonly done in England where tenant-right customs prevail—at a moderate interest, enough to carry him on in farming until he could recoup himself the purchase of good-will out of his savings.

It would be easy to multiply these considerations on the justice and advantages of the Ulster tenant-right. When fully recognised and liberally interpreted, this custom appears

* One northern proprietor qualified it on this ground as "black mail," but subsequently described it as a "gracious custom." Happily the general opinion of Ulster landlords bears out the latter interpretation. It would be easy to quote evidence to this effect. I can here only refer to that of Mr. Hamilton, of St. Ernan's, Co. Donegal, who has discussed the custom and the above objection.—*Macmillan's Magazine*, Dec. 1869.

in its true light, as an institution admirably adapted to the circumstances which gave it birth. It stamps landed property with a *social* character, because it protects the accumulated labours of generations; enforces a system of reciprocal duties; promotes peace and general well-being. The interest of all parties alike—of tenants, of landlords, and the community—therefore, requires the abolition of those restrictions which conflict with the custom of Ulster, as understood and practised by the best and most liberal landlords.

There is at all events much to be said in favour of this view, in point of reason and legal authority. If the courts should not sanction it, or should do so only partially, the Act presents to the Ulster tenant* the alternative of claiming, with the consent of the court, compensation both in respect of improvements and of disturbance. But I should strongly advise the tenants to hold on to a custom which, once established, must gradually gain strength, and tend towards a uniform rate—one varying with natural causes, material or social, but not with the caprice of individual owners. The maintenance of the Ulster custom of tenant-right in its original integrity, free from all later innovations and corruptions, is of the deepest importance, not merely as regards the province of Ulster—where its present pecuniary value has been estimated at not less than twenty millions sterling—but in reference to the whole of Ireland. The Act of 1870 (sec. 2) has legalised this custom wherever it can be shown to subsist in its "essential particulars."† That it does already thus exist in many districts admits of no doubt. It is equally certain that the estates‡ where the growth of the custom of Ulster, to its full extent, has been encouraged, are among the best managed and present

* This must be understood only with limitations, which will be pointed out hereafter, pp. 93 *et seq.*

† The Act has various other provisions which indirectly encourage the spread of the Ulster custom. The seventh section gives the tenant, on quitting, a claim against the landlord who has, expressly or by implication, consented to the purchase of good-will. It also authorises landlords to free themselves from claims on this ground, or a claim for improvements by tenants who quit voluntarily, by allowing them to sell their interest.

‡ For example, that of Lord Portsmouth. See *The Land Question of Ireland*, by W. O'Connor Morris, p. 134.

the happiest results of any in the country. The gradual spread of this custom, as based on the practice of the best Irish landlords, is therefore a matter of the greatest moment, and the Irish public must anxiously await the judgments of the local courts, and the interpretation of the Act of 1870 by the Court for Land Cases Reserved.

Non-Customary Holdings.

The Act next deals with holdings not subject to the Ulster tenant-right custom, which I shall call non-customary holdings. It deals with them in a two-fold way. The tenant, generally speaking, may either claim compensation for disturbance and improvements (secs. 3, 4, 5, 8), or he may claim, in respect of money previously paid for good-will, with the consent, express or implied, of the landlord, and for improvements not included in such sum (sec. 7).

The latter of these alternatives (viz., claiming for purchase-money of good-will, *plus* any improvement not included thereunder—sec. 7) does not require any lengthened notice. It approximates to the principle of the Ulster tenant-right, but differs from it essentially, since the tenant who holds under that custom need not prove the landlord's consent to the previous sale, but the non-customary tenant must do so.*

The Act enables non-customary tenants, yearly and leasehold (but as to both classes with important exceptions),† who pay their rent, and observe the conditions of tenure, if disturbed by the landlord, and about to quit their holding, to claim compensation according to a sliding scale (secs. 3, 16). The scale is based on the public valuation of Ireland; the compensation on so many years' purchase of the actual rent, as specified for each class of tenancies. The highest rate of compensation allowed in respect of the loss sustained by the tenant by reason of quitting his holding, is seven years' rent for tenancies valued up to £10 per annum; the lowest is one year's rent for tenancies valued over £100 per annum. Tenants whose holdings are valued under £50 per annum cannot

* See further remarks on sec. 7, pp. 108, 109.

† These are pointed out in The Practical Analysis. See also the Tables below.

contract to renounce compensation for disturbance, until the 1st of January, 1891 (secs. 3, 12). Their claim may be forfeited or reduced by certain acts (sec. 3, provisos, 1, 2; secs. 9, 13, 14).

The following classes of tenancies are excluded from claiming for disturbance, viz.: firstly, leaseholds made after the 1st of August, 1870, for thirty-one years and upwards; secondly, tenancies existing on the 1st of August, 1870, if held by lease, or if held by a yearly tenant, where the valuation exceeds £100; thirdly, tenancies, yearly or leasehold, existing on the first of August, 1870, held under a middleman, when the superior landlord evicts; lastly, all tenancies which have been determined before the 1st of August, 1870* (sec. 3).

In addition to the claim for disturbance, and in many cases where this is withheld, the Act sanctions the claim of a tenant, who is quitting his farm, against the landlord, for improvements made, purchased, or inherited by him (sec. 4). The definition of improvements includes all words *suitable*† *to the holding* which increase its letting value, as well as manures, tillage, and away-going crops (secs. 70, 8). This claim cannot, like that for disturbance, be forfeited. But it may be reduced by counter-claims for arrears of rent or taxes, or for deterioration, and also, where the tenancy existed on the 1st of August, 1870, by reason of long enjoyment, low rent, or other benefits to the tenant (sec. 4). The claim for improvements can also be made by a tenant who quits voluntarily, or is evicted for non-payment of rent, or breach of condition; but, in these cases, the landlord may free himself from liability by allowing the tenant to sell his interest (secs. 4, 9). Permanent buildings, and the reclamation of waste land confer a claim for compensation after any lapse of time, subject, however, to be reduced as above stated, where the tenancy existed on the 1st of August, 1870 (sec. 4, last paragraph). But as regards other improvements, if made before the 1st of August, 1870,

* Of course this does not apply to cases where the parties have been left in possession under a *renewed* tenancy.

† "No improvement shall be deemed to be required for the *suitable* occupation of a tenant's holding and its due cultivation, which appears to the court to diminish the general value of the estate of the landlord" (sec. 4).

the claim must be put forward within twenty years from the making of such improvements. The tenant's claim for improvements cannot be renounced by contract, unless his holding is valued at or over £50 per annum (sec. 12). In specified cases (sec. 4, provisos 1 (b, c, d, e), and 2) the claim is not sanctioned. The claim for compensation for improvements of certain classes of tenants is limited to particular kinds of improvements. Thus, a lease for thirty-one years or upwards limits this claim to reimbursement for permanent buildings and reclamation of waste land (sec. 4).

The Act also facilitates the proof of the claim for improvements, by reversing the presumption which hitherto has existed in favour of these having been made by the landlord (sec. 5); but this important provision is subject to many exceptions as regards improvements made before the 1st of August, 1870 (see below, Practical Analysis).

The Act makes no provision by which the tenant can *directly* protect himself from an unjust rise of rent. In such an event, the holder of a farm subject to Ulster tenant-right can merely refuse to pay the increase, and claim his right to sell at the existing rent, or, at most, a fair rent. The non-customary tenant can only refuse to pay, and challenge the landlord to evict, at the risk of his having to pay compensation for disturbance and improvements. But the non-customary tenant should bear in mind that if the landlord satisfies the court the the increase of rent asked is reasonable, the tenant who persists in refusing to pay it will lose all claim for disturbance (sec. 18).*

If a liberal construction of the Act be, as already noticed (p. 28), necessary for the protection of the Ulster tenant-right, the same is no less so for that of the non-customary tenants.

First, as regards compensation for disturbance; it is clear that disturbance does not mean actual eviction (see secs. 16 and 21). I conceive it arises on service of a notice to quit, or other legal proceeding for terminating the tenancy.

* It would seem that the tenant may assent to the terms proposed by the landlord, even at the trial of the claim, but of course he would have to pay the costs of the proceeding.

A most important matter is the construction to be placed on the general enactment contained in section 3 of the Act. This provides that the non-customary tenant who "is disturbed in his holding by the act of the landlord, shall be entitled to such compensation for the *loss* which the court shall find to be *sustained by him by reason of quitting his holding*, to be paid by the landlord, as the Court may think just, so that the sum accorded does not exceed the scale following." A subsequent section (19) provides that the decree of the Court "shall state the items of claim allowed," including, of course, "the particulars of loss sustained by the tenant in quitting his holding." The object of this part of the Act is to check *arbitrary evictions;* to prevent the dispossession of tenants, unless caused by their own misconduct. I conceive, therefore, that the "loss" here intended does not mean simply specific damage caused to the individual tenant by his disturbance. Such a construction would render the operation of the measure uncertain and inadequate. The true meaning of the Act, I submit, is that the farmer *must be taken to have a real and continuing interest in his holding*, according to the scale in which he is placed, combined with his claim for improvements. The disturbance of the tenant by the landlord deprives the former of the benefit of sale he would otherwise have enjoyed, and even of the prospective advantages which he might have reaped by his skill and industry. Account should also be taken of the depreciation of stock by compelling a sudden sale and the expense of removal. The difficulty of getting a new holding may also compel the tenant and his family to emigrate. All these considerations are included in awarding compensation, even for yearly holdings, under the Railway Act (*Lloyd's Law of Compensation*, 2nd Ed., 1870, pp. 50-53, 80-84). The measure, therefore, of the tenant's "loss" will, especially where the conviction is arbitrary, in most cases equal, though it cannot exceed the *maximum** of damages that can be awarded, subject, however, to be refused by reason of the acts of the tenant, in the cases specifically pointed out (secs. 3, 9,

* It should be remembered that the good-will brings a higher proportionate price for small farms, the competition for these being greater, and therefore the possessory element more valuable.

13, 14, 18); or to be reduced on account of arrears, deterioration of the holding by, or other misconduct of, the tenant (secs. 3, 18). I must add that the last paragraph of sec. 18 will call for the greatest exercise of discretion, and a sound knowledge of Irish circumstances in the court. If, for example, this clause should be made an organ for raising rents arbitrarily, or for forcing tenants to accept costly leases, or leases containing, as is too often the case, unduly stringent clauses, the entire scope of the measure would be put in jeopardy. If, on the other hand, a liberal construction of the Act be adopted, the tenants can form some approximate estimate of the value of their interest in their holdings, compounded of compensation for disturbance and improvements. Unless they can so calculate, the object of the measure will be defeated—the "message of peace" converted into a source of litigation and social discord.

Next, as regards compensation for improvements. The general definition given by the Act (sec. 70) is plainly intended to benefit the tenant, and should be liberally interpreted. This can only be done by taking the holding *as it has existed, and exists when the claim is made*, and not with reference to any possible changes which may be contemplated by the landlord or the incoming tenant. In other words, the improvements should be valued as they would be by an incoming tenant of the same class buying the outgoing tenant's interest in his improvements.*

The next point, which demands a liberal interpretation, arises out of the clause (sec. 4, last paragraph) which *directs* the court to reduce the tenant's claim for improvements *made before that date, as regards tenancies existing on the 1st of August*, 1870, by considering the time during which such tenant may have enjoyed the advantage of such improvements. Now, there are, no doubt, certain kinds of improvements which repay themselves in a longer or shorter time, as tillage, manuring, drainage, etc., and it is with these exclusively that

* See the remarks of Mr. George Campbell, *The Irish Land*, pp. 172-8. "The question is, what is the value of the land to the claimant, not what the value is to the company, when the land is taken by the latter."—*Lloyd's Law of Compensation*, p. 52.

English tenant-right customs are concerned; but in Ireland the buildings—both the houses and offices—have been and are commonly erected by the tenants, and these important classes of improvements stand on a wholly different footing. Even farm buildings not only repay the outlay very slowly, but they require constant attention and expensive repairs. Their *conservation* demands frequent and often considerable expenditure. Reclamation, also, is a laborious and expensive process, and any serious deduction for this class of improvements, so general and important in Ireland, especially among the very small farmers, because of long enjoyment, would be, I conceive, both unjust and impolitic.

LAND PURCHASE.

The second part of the Act of 1870 institutes a system intended, and I hope calculated, to promote the gradual formation of a FARMER PROPRIETARY in Ireland. The plans proposed for effecting this object have been noticed by Mr. George Campbell, from whose book (*The Irish Land*, pp. 74-77) I may be allowed to quote the following passage:—"The scheme which has attracted most attention, and has been received with most favour, is that of Mr. Bright, for acquiring the estates of landlords willing to sell, and giving the tenants the opportunity of becoming owners on favourable terms. I have no doubt that this plan would be good as far as it goes, but, in addition to the objection that it involves the use of English money, there is this also to be said, that the plan cannot within any reasonable time be carried far enough to be a real remedy for the grievance of the mass of the Irish people; it would only benefit a select few. I believe it would be most desirable that Government should, on reasonable terms, acquire a few large Irish estates, put a good Indian collector in charge, and try the effect of model management on Asiatic principles. Such an experiment would, I daresay, be well worth the money. . . . Mr. Henry Dix Hutton certainly puts a similar proposal, in a very attractive form, in his scheme* for State land banks, which are to advance money to

* Put forward in the pamphlet, entitled, *Prussia and Ireland*, 1867. [Note to the Third Edition].—Those who wish fully to understand the

the tenants for the purchase of their farms at 3½ per cent., and receive 5 per cent., so that 1½ per cent. forms a sinking fund to redeem the land in thirty-five years. His view is that, taking the value of land in Ireland to be twenty years' purchase, the tenant paying 5 per cent. will pay no more than his present rent, while he at the same time gradually acquires the property in the soil. He would also immediately obtain that which he most covets—fixity of tenure.

To Mr. Bright justly belongs the honour of having first proposed the extension of loans of public money—long familiar in Ireland in the shape of advances to landlords for drainage purposes—to a system for enabling Irish tenants to buy their farms. Of the particular plans suggested for carrying out the policy above referred to, that proposed by the writer has alone at present been adopted by the legislature, probably as being the one the immediate application of which presented fewest difficulties. According to this scheme, tenant-farmers can purchase, either by agreement with their landlords, or on sales advertised in the Landed Estates Court. The Board of Works is authorised to advance to the occupier thus purchasing, a sum not exceeding two-thirds of the purchase-money, repayable by an annuity charged on the holding, at the rate of 5 per cent., and terminable in thirty-five years; or sooner, if the tenant can pay off the balance of debt remaining due on foot of the advance. An example will illustrate the great advantages which this scheme offers to tenants. Suppose the tenant of a twenty-acre farm, let at an annual rent of £24, agrees to purchase it at the rate of twenty-five years' purchase —that is, for £600. The Government, if satisfied of the security, will advance two-thirds of this sum, or £400. The tenant must find the £200. If he possesses this sum, it would probably be invested on deposit in a bank, or in the funds, at not more than £3 per cent. If borrowed, he might have to pay £5 per cent. The annuity payable to Govern-

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important revolution commenced by the illustrious Stein in Prussia, and completed by his successors, under which the great body of farmers have been converted into proprietors should study Lette & Von Rönne *Die Landes-Kultur-Gesetzgebung der Preussichen Staates*, 2 vols., and Dr. Meitzen's admirable work, *Der Boden und die Landwirth-schaftlichen Verhältnisse des Preussischen Staates*, 4 vols, *Berlin*, 1868-71.

ment would amount to £20, to which must be added the interest on the £200 withdrawn from investment or borrowed, that is, as the case may be, either £6 or £10 per annum, making in all an annual payment of £26 or £30. The above tenant, who had saved a sum amounting to one-third of the purchase money, would thus pay £2, or 2s. per acre, beyond his present rent; or, if obliged to borrow it, he must pay £6, or 6s. per acre beyond his present rent. In either case, at the end of thirty-five years, he would have no more rent to pay; the purchase money, invested or borrowed, together with the additional rent per acre during thirty-five years, having converted him into a proprietor in fee-simple.

The Act contains various other provisions of more or less importance concerning tenancies-at-will, notices to quit, and county cess. It is not necessary to notice them more particularly in this place.

PRACTICAL ANALYSIS.

The Act consists of five parts arranged as follows:—

I. Tenant-right and proceedings in Court;
II. Purchase of Farms;
III. Advances of Public Money;
IV. Certain Legal Proceedings;
V. County Cess, Tenants-at-will, and Miscellaneous Provisions.

PART I.—TENANT-RIGHT.

The Act applies generally to agricultural holdings, to pastoral holdings, and to such as comprise both arable and pasture land (sec. 71). Certain classes of holdings are, however, wholly or partially excluded—1stly, demesne land; 2ndly, town parks; 3rdly, labourers' or servants' holdings; 4thly, conacre; 5thly, temporary lettings; 6thly, cottage allotments not exceeding one quarter of an acre (sec. 15). Pastoral holdings valued under £50 per annum come within the Act (ib.). But a claim for improvements *only*, or for the purchase of good-will with the landlord's consent (sec. 7), and not for disturbance, is given in respect of holdings *wholly or mainly*

pastoral, which (1) are valued at or above £50 per annum, or (2) do not comprise the tenant's abode, unless the pasture land adjoins to or is ordinarily used with the holding where the tenant usually resides (sec. 15). The like claim is, it would seem, admissible in respect of demesne land and town parks (sec. 15)—Hill v. Lord Antrim, 5 Ir. L. T. 70.

The tenancies embraced by the Act fall under two heads; 1. ULSTER TENANT-RIGHT HOLDINGS; 2. NON-CUSTOMARY HOLDINGS.

ULSTER TENANT-RIGHT HOLDINGS.*

Customary tenure exists both within and without the Northern Province. The Act in effect legalises the "ULSTER TENANT-RIGHT CUSTOM,"† wherever a holding may be situated which is PROVED to be subject to it (secs. 1 & 2).

The Act sanctions the extinction by purchase or otherwise of the custom.‡ In that event the tenant is, I conceive, remitted to the claims which he could make as a non-customary tenant; but the court would no doubt take into account the consideration given for extinguishing the custom (sec. 18).

The Act also authorises tenants to renounce the benefit of the custom. It is remarkable that the tenant within Ulster who renounces is placed (probably by oversight) in a *worse* position than a corresponding tenant outside of that province; since the former can claim only for disturbance and improvement (sec. 1), while the latter can claim for these, or on foot of the purchase of good-will, if made with the consent of the landlord (secs. 2, 7).

In electing to stand by the custom or to renounce it, the nature of the tenancy must of course be considered,§ and also that when the tenant renounces, the holding ceases to be subject to Ulster tenant-right.

NON-CUSTOMARY HOLDINGS.

Holdings not governed by the Ulster tenant-right custom

* See Introduction.

† Its nature has been discussed already, see Introduction.

‡ The contract must be in writing, duly signed under the Statute of Frauds.

§ See "Non-customary Holdings," below.

are protected by the Act in three separate modes. These are (1) Compensation for disturbance; (2) Compensation for improvements; (3) Sale of the tenant's interests. The rights thus conferred on tenant-farmers are different in their nature, and in some cases affect different classes of holdings. In order to render these provisions as clear as their complication admits, I have adopted the following plan. I shall first explain, as accurately as can be done without obscuring the subject by minute details, *the general scope of the Act under the above three heads*, considering each by itself and in reference to the other two, I shall next exhibit, as nearly as possible, *the legal position of each class of non-customary holdings* (see Tables, below).

NON-CUSTOMARY HOLDINGS—GENERAL SCOPE OF THE ACT.

Two general remarks should be premised, since they apply to all three heads, and affect every class of non-customary holdings.

First. Where such holding—two or more held of the same landlord being deemed for this purpose one holding—is valued *at or above* £50 *per annum*, the tenant may contract in writing not to make any claim for compensation (sec. 12). The tenant of a holding valued *under* £50 per annum cannot do so* (ib.).

Second. The tenant's claim against the landlord only arises when he is quitting his holding; that is, when steps are taken to terminate the tenancy (sec. 16).

1. COMPENSATION FOR DISTURBANCE.†

A. *What is disturbance?*

Although the Act gives no definition of "disturbance," the term plainly imports the removal of the tenant by the landlord from his holding without reasonable cause. One main object of this part of the Act is to give the industrious farmer practical security against being capriciously deprived of his home and means of subsistence, by obliging the landlord who evicts to disburse a sum proportionate to the tenant's loss

* This restriction, so far as relates to claims for disturbance, is only to remain in force until the 1st of August, 1891.

† See Introduction.

occasioned by leaving his farm. This, together with any compensation awarded for improvements, must be paid or deposited before the tenant can be actually dispossessed (secs. 3, 4; 21). The tenant's claim for disturbance—as to improvements it is otherwise, (see below), does not arise where he quits of his own accord,* or even when he is evicted for non-payment of rent (except in two specified cases), or for breach of certain conditions (sec. 9); or if, after having given notice of surrender, he refuses to give up possession; or where he subdivides or sublets without consent in writing, or after written prohibition; or lets in conacre, save for growing potatoes or green crops (sec. 3, prov. 2). Where the landlord merely resumes possession because the tenant refuses his consent to a *fair* increase of rent, or other terms which the court deems reasonable, and the landlord "was and is willing" to continue the holding on such terms, the tenant forfeits his claim for disturbance (sec. 18). Holdings from year to year, existing on the 1st of August, 1870, give the tenant no claim for disturbance where the landlord evicting can set up any of the following defences:—"That the tenant has assigned without the landlord's consent and acceptance of the assignee; the rent being in arrear; or contrary to the estate practice; or unreasonably, in the judgment of the court (sec. 13): or that the tenant is evicted for unreasonably refusing the landlord or his agents liberty to enter on the holding for certain specified purposes (sec. 14). The landlord may resume possession of part of a non-customary holding for cottages (one-twenty-fifth of the whole), without liability for disturbance (sec. 10).

B. *What classes of tenants can claim for disturbance?*†

Assuming that a disturbance has arisen, as described under head A, the following classes of non-customary tenants are ENTITLED to claim for disturbance (sec. 3):—

(1). Tenants from year to year valued below and up to

* The tenant quitting voluntarily, or evicted for such causes, may, however, under certain circumstances, prefer a claim for good-will (see sec. 7, and p. 52).

† See also Observations, p. 98.

£100 per annum, whose holdings exist on 1st of August, 1870, when the disturbance is the act of the *immediate* landlord.

(2). Tenants from year to year whose holdings are created after the 1st of August, 1870, unless the claim is excluded by contract, which is prohibited during twenty years from 1st January, 1871, for all holdings valued under £50 per annum.

(3). Tenants under leases granted after the 1st of August, 1870, for any term less than thirty-one years, unless the claim is excluded by contract, which is prohibited during twenty years from 1st January, 1871, for all holdings valued under £50 per annum.

The following classes of non-customary tenants are not ENTITLED to claim for disturbance (sec. 3) :—

(1). Tenants whose holdings are from year to year, existing on the 1st of August, 1870, but valued at more than £100 per annum.

(2.) Tenants holding under leases granted before the 1st of August, 1870.

(3.) Tenants holding under leases granted after the 1st of August, 1870, for thirty-one years, or any longer term.

(4.) Tenants whose holdings have expired before the 1st of August, 1870.

(5.) Tenants whose holdings existed on the 1st of August, 1870, but who are disturbed by the act of the *superior* landlord.*

C. *What is the measure of claim for disturbance ?*

A limited owner and his tenant may agree as to the amount of compensation for disturbance (sec. 27).

When litigation is necessary, the tenant can claim compensation for the loss† occasioned by the disturbance to such amount as the court shall think just, not exceeding the maximum specified in the Act, and which in no case is to exceed £250. The Act provides a sort of sliding-scale, regulated by the rating of holdings under the public valuation

* For example, where the tenant holds under a middleman whose lease falls in after the 1st of August, 1870.

† See Introduction, p. 94.

(sec. 3). Each class of holding between the limits of value specified, will entitle the holder to a sum for disturbance not exceeding so many years' purchase of the rental. Thus, holdings rated below and up to £10 per annum will entitle the tenant to claim a sum not exceeding seven times his rent, and so on, the number of years' purchase awarded diminishing according to the scale of valuation (sec. 3).

An arrangement is also provided under which the tenant who is valued at any given sum in the scale can always claim at least as much as the tenant below him in the scale.

For example, estimating approximately the proportion between rating and renting as two to three, a holding rated at £10, rented at £15, would entitle the holder to seven times the rent, or £105 as compensation for disturbance. But the compensation payable in respect of a holding placed in the second highest scale (say rated at £12 and rented at £18), would only amount to £90, if the limit of five years' purchase were uniformly insisted on. The tenant in the latter case is therefore allowed to estimate his compensation as if he were placed in the higher scale for that—being the lower in valuation—and, accordingly, to recover £105, being the amount which he could claim if he were rated at £10, and his rent proportionally reduced; *i.e.*, from £18 to £15 (sec. 3).

The tenant of a holding rated up to £10 per annum can claim seven years' rent, and the tenant of a holding rated from any sum over £10 up to £30 per annum can claim five years' rent for disturbance. Nevertheless, the Act provides, that if a tenant falling within the first of these classes claims more than five years' rent, and if a tenant falling under the second of these classes claims more than four years' rent, in either of such cases his claim for improvements must be confined to permanent buildings and reclamation of waste land (sec. 3). In all other cases the claim for disturbance and that of improvements are cumulative, the tenant being at liberty to recover (subject to the above limitation) the full amount awarded under the Act for each sort of claim.

The claim for disturbance may be annulled for any of the reasons stated under head A (above). It may also be reduced in respect of arrears, wrongful deterioration, or other just causes (secs. 3, 18).

II. COMPENSATION FOR IMPROVEMENTS.*

A. *What improvements authorise a claim for compensation?*

The term improvement is defined in sec. 70 to mean (1) any work which being executed adds to *the letting value* of the holding on which it is executed, and is *suitable* to such holding; also (2) tillages, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding." But no improvement shall be deemed to be required for the suitable occupation of a tenant's holding and its due cultivation, which appears to the court to diminish the general value of the estate of the landlord (sec. 4). The breaking up of grazing land or the cutting of timber (not registered under the Act) are not authorised by the Act (sec. 4).

The Act practically recognises the three great classes of agricultural improvements. (1). Permanent improvements, including houses, farm buildings, and reclamation; the last, however, being confined to *waste*† land.‡ (2). Durable improvements, comprising drainage, fencing, and the like. (3). Husbandry improvements, as unexhausted tillages, manures, and such like farming works (secs. 4, 70). Under this head also may be classed the away-going crops (sec. 8). The Act specifies an important distinction between Class 1 and Classes 2 and 3, when made before the 1st of August, 1870. Improvements, Class 1, confer a right to compensation, no matter how long the claim may be delayed. But improvements, Classes 2 and 3, if made *before* the 1st of August, 1870, confer no right to compensation where more than twenty years have elapsed between the date of the particular improvement and the making of the claim. A similar limitation of the claim for improvements to Class 1, in the case of certain claims for disturbance, has been noticed above (Compen-

* See Introduction, p. 95; see, also, Observations, p. 98.

† The word "waste" was not in the original bill. Its introduction has narrowed the tenant's claim on this head very materially, since it excludes the removal of stones from land under pasture. This kind of improvement, therefore, will fall only under the second head above mentioned.

‡ The planting and cutting of registered trees by the tenant is left to be regulated, as before, by the existing Timber Acts (sec. 4).

sation for Disturbance, C, p. 103). The foregoing distinctions are general, applying to all sorts of tenancies (sec. 4). Another important distinction of the same nature is made, which only affects certain kinds of leasehold tenancies. Tenants who either hold under leases "made *before* the 1st of April, 1870, for a term of life or lives, with or without a concurrent term of years, and which leases shall have existed for thirty-one years before the making of the claim;" or, who hold under leases made *either before or after* the 1st of August, 1870, for a term certain of thirty-one years or upwards, can only claim for improvements of Class 1 or Class 3.

The Act excludes the claim for improvements of whatever sort in certain cases, which will be more conveniently mentioned under the next head (B).

B. *Who can claim for improvements?*

Speaking generally, *all* tenants can claim for improvements *when they quit their holdings;* but they can make no claim as long as they continue in the enjoyment of them. A distinction, however, is drawn as to the mode of enforcing the claim. If the tenant is evicted on notice to quit, or on expiration of his term, his claim is directly against the landlord for compensation. But if he quits voluntarily, the landlord may free himself from payment, by allowing the tenant to sell his interest in the improvements on such terms as the court may deem reasonable (sec. 4, 4). Tenants who are evicted for non-payment of rent, or breach of certain conditions, are also classed by the Act under the latter head as tenants who quit voluntarily (sec. 9).

The manifest policy and aim of the Act is to place the skilful and industrious tenant in a position such that he cannot be deprived of the fruits of his capital and exertions, unless by his own default. In certain cases the Act steps in to prevent what might seem a hardship on the landlord, (sec. 4, 1). Thus, where the improvements are made within two years after the 1st of August, 1870, or during the residue of a lease granted before the same date, the tenant may lose his claim for improvements; but only when he has made them after a prohibition in writing by the landlord, nor then unless

the court deems the improvement injurious to the estate (sec. 4, 1) (*b*)). Again, if the landlord has undertaken to make any improvement himself, the tenant cannot claim compensation for making it, unless the landlord has failed to perform his undertaking within a reasonable time (sec. 4, 1 (*c*)).

The tenant cannot *forfeit* his claim for improvement (like that of disturbance) by non-payment of rent, breach of condition or otherwise. It can, however, be reduced on just grounds (see below, D, p. 107).

There are several modes in which the tenant can be deprived of compensation for improvements by his own consent.

Firstly. The tenant whose holding, or the aggregate of whose holdings in Ireland, is valued at or over £50 per annum, may contract not to make any improvement (not being one required for the suitable occupation of his holding and its due cultivation) or to forego his claim for improvements (sec. 4, 1, *d*, sec. 4, last two paragraphs but one; sec. 12).

Secondly. A tenant may have contracted, or may contract, to make an improvement in consideration of his receiving some benefit, such, for example, as an abatement of rent (sec. 4, 1, *c*).

Thirdly. A tenant may have contracted, by lease or written contract, before the 1st of August, 1870, not to claim compensation in respect of any improvement.

C. *How is claim for improvements to be proved?*

The Act sanctions a general presumption (subject, however, to important exceptions) that all improvements have been made by the tenant or his predecessor in the holding (sec. 5). The landlord may prove the contrary; that is, may show that the improvements claimed for have not been executed by the tenant, or that the practice of the estate was for the landlord or his predecessors to contribute to the making of them (sec. 5). The burden of proof will thus be usually thrown upon the landlord. This rule is especially important as regards improvements made *before* the 1st of August, 1870, and is strictly in accordance with the well-known fact that, speaking generally, all improvements have been made by the tenants in Ireland.

Within the last twenty years more has been done in that way by landlords, chiefly, however, by assisting the tenants, and even that to a very partial extent. Nor ought the landlord to have much difficulty in rebutting the presumption, where he or his predecessors made or contributed to the improvements.

The Act, however, has introduced, with reference to all *improvements made by non-customary tenants before the 1st of August*, 1870, some most important exceptions, which to a large extent deprive the tenant of the benefit of this presumption. These exceptions, of course, do not affect the claim for compensation itself, but merely the *proof*, obliging the tenant in the excepted cases to give evidence, positive or presumptive, that he or his predecessors actually made the improvements. The exceptions are six in number, and their effect is shortly as follows:—

The tenant must *prove* his claim for improvements *made previously to the 1st of August*, 1870; if made

(1). Before the date of a sale to the landlord or his predecessor in title.

(2). During a lease.

(3). Twenty years or upwards before 1st of August, 1870.

(4). Where the holding is valued above £100 per annum.

(5.) Where the landlord proves that the practice of the estate was for him to make the improvements.

(6). Where the landlord reasonably satisfies the court that the tenant or his predecessor did not make the improvements (sec. 5).

The Act also, with reference to improvements made before or after the 1st of August, 1870, either by landlord or tenant, introduces a plan of registration, in order to preserve evidence for proving the claim, if made at any future time (sec. 6; rules 16-19). This registration is optional, and, except in case of buildings, and such like erections, the provision would probably be of little advantage to either party, especially to tenants (see below, p. cix).

D. *What is the measure of compensation for improvements?*

This may be ascertained by agreement between a limited owner and his tenant (sec. 27).

The tenant must of course prove the value of the improvements; that is, the amount of capital and labour expended in making them. The Act assigns no limit to the amount claimed, but the court is directed, in making its award, as to improvements made before the 1st of August, 1870, on a holding under a tenancy existing at that date, to "take into consideration the time during which such tenant may have enjoyed the advantage of such improvements; also, the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made" (sec. 4, last clause, and see Observation, p. 66).

As before stated (A. p. 104), the claim must, in certain cases, be limited to permanent buildings and reclamation of waste land.

Where the non-customary tenant has obtained compensation, wholly or in part, for improvements under the head of payment for good-will, he cannot to that extent claim for them separately. But for improvements not so included; for example, for any made since the date of purchase of good-will, a claim may be sustained (sec. 7).

The sum awarded for improvements is made subject to deductions in respect of arrears of rent or taxes, or wrongful deterioration (secs. 4, 5).

III. SALE OF THE TENANT'S INTEREST.*

The Act sanctions the sale of the tenant's interest or good-will to this extent, that if the landlord has consented to the sale, the tenant quitting his holding may claim against the landlord on account of the purchase-money, so far as the court may deem just (sec. 7). This claim may be enforced *directly* against the landlord if he evicts the tenant; but in case the tenant quits voluntarily—which includes ejectment for non-payment of rent or breach of certain conditions (sec. 9)—the landlord can discharge himself of liability, by offering to allow the tenant to sell on such terms as the court, in case of litigation, shall deem to have been reasonable. The tenant claim-

* See Introduction, p. 9.

ing under sec. 7 cannot also claim for disturbance. But the sum accorded for purchase of good-will may be supplemented by an award of compensation in respect of improvements not comprised in the good-will; for example, such as may have been made by the tenant since its date (sec. 7).

The landlord's *consent* need not be express. It may be implied from dealings or circumstances; for example, the acceptance by the landlord of arrears from the incoming tenant, or the discharge of such with his knowledge, actual or presumable, out of the purchase-money paid to the outgoing tenant (sec. 7).

No claim under this section can be made where the sale of good-will took place during the existence of a lease made before the 1st of August, 1870 (sec. 7).

The tenant of a holding subject to the Ulster tenant-right—if situated *out of that province* (sec. 2)—who renounces its benefit, may claim under sec. 7.

The sale of *improvements* by the tenants may also be sanctioned by the landlord as a substitute for a direct claim against himself, when the tenant quits voluntarily, or is evicted for non-payment of rent, or breach of certain conditions (secs. 4, 5, 9).

CLASSIFICATION OF HOLDINGS.*

ULSTER TENANT-RIGHT HOLDINGS.

(1.) Within the Province of Ulster (sec. 1.)
(2.) Outside the Province of Ulster (sec. 2.)

See Observations, pp. 63-73.

NON-CUSTOMARY HOLDINGS.

HOLDINGS EXISTING ON THE 1ST OF AUGUST, 1870.

	Claim for Disturbance. (sec. 3).	Claim for Improvements. (secs. 4, 5, 8).	Claim for purchase of Good-will, made with Landlord's Consent. (sec. 7).
HOLDINGS FROM YEAR TO YEAR, *existing on 1st August*, 1870 :—			
1. †Valued above £100 per annum.	None.	Allowed ; unless held under written contract, which expressly excludes the same ; or unless the tenant where he has a holding valued at £50 and upwards, has contracted in writing not to claim. But as to improvements made *before the 1st of August*, 1870, only for permanent buildings and reclamation of waste land, and for such other improvements as were made within twenty years before making the claim : as to proof of same, see before, p. 106, sec. 5. For certain cases of improvements excepted, see sec. 4, 1 (*b*), (*c*), (*d*), (*e*).	Allowed.
2. Valued below and up to £100 per annum :			
(1.) If disturbed by *head* landlord ;	None.		
(2.) If disturbed by *immediate* landlord.	Allowed ; unless the tenant, where he has a holding valued at £50 or upwards, has contracted in writing not to claim.		

* See Practical Analysis, p. 98.

† This term throughout refers to a valuation under the Acts for valuing rateable property in Ireland.

HOLDINGS EXISTING ON THE 1ST OF AUGUST, 1870.

	Claim for Disturbance. (sec. 3).	Claim for Improvements. secs. 4, 5. 8).	Claim for purchase of Good-will, made with Landlord's Consent. (sec. 7).
LEASES *granted before the 1st of August*, 1870.	None.	Allowed; unless they are expressly excluded by the lease (sec. 4, 2); or landlord prohibits making improvements in writing, and court deems the same to be calculated to diminish the general value of estate (sec. 4, 1 (*b*). Where the lease was granted for thirty-one years or upwards, or for a term of life or lives, with or without concurrent term of years, which lease shall have existed for thirty-one years before making claim, the claim (unless the lease specially provides the contrary) can only be made for permanent buildings, reclamation of waste land, and unexhausted tillages or manures (sec. 4, 3).	None.

CLASSIFICATION OF HOLDINGS.*

ULSTER TENANT-RIGHT HOLDINGS.

(1.) Within the Province of Ulster (sec. 1.)
(2.) Outside the Province of Ulster (sec. 2.)

See Observations, pp. 63-73.

NON-CUSTOMARY HOLDINGS.

HOLDINGS EXISTING ON THE 1ST OF AUGUST, 1870.

	Claim for Disturbance. (sec. 3).	Claim for Improvements. (secs. 4, 5, 8).	Claim for purchase of Good-will, made with Landlord's Consent. (sec. 7).
HOLDINGS FROM YEAR TO YEAR, *existing on 1st August*, 1870 :—			
1. †Valued above £100 per annum.	None.	Allowed ; unless held under written contract, which expressly excludes the same ; or unless the tenant where he has a holding valued at £50 and upwards, has contracted in writing not to claim. But as to improvements made *before the 1st of August*, 1870, only for permanent buildings and reclamation of waste land, and for such other improvements as were made within twenty years before making the claim : as to proof of same, see before, p. 106, sec. 5. For certain cases of improvements excepted, see sec. 4, 1 (*b*), (*c*), (*d*), (*e*).	Allowed.
2. Valued below and up to £100 per annum :			
(1.) If disturbed by *head* landlord ;	None.		
(2.) If disturbed by *immediate* landlord.	Allowed ; unless the tenant, where he has a holding valued at £50 or upwards, has contracted in writing not to claim.		

* See Practical Analysis, p. 98.

† This term throughout refers to a valuation under the Acts for valuing rateable property in Ireland.

NON-CUSTOMARY HOLDINGS, CONTINUED.

HOLDINGS EXISTING ON THE 1ST OF AUGUST, 1870.

	Claim for Disturbance. (sec. 3).	Claim for Improvements. secs. 4, 5. 8).	Claim for purchase of Good-will, made with Landlord's Consent. (sec. 7).
LEASES *granted before the 1st of August*, 1870.	None.	Allowed; unless they are expressly excluded by the lease (sec. 4, 2); or landlord prohibits making improvements in writing, and court deems the same to be calculated to diminish the general value of estate (sec. 4, 1 (*b*). Where the lease was granted for thirty-one years or upwards, or for a term of life or lives, with or without concurrent term of years, which lease shall have existed for thirty-one years before making claim, the claim (unless the lease specially provides the contrary) can only be made for permanent buildings, reclamation of waste land, and unexhausted tillages or manures (sec. 4, 3).	None.

NON-CUSTOMARY HOLDINGS, CONTINUED.

HOLDINGS CREATED AFTER THE 1ST OF AUGUST, 1870.

(As to what are new and what transmitted holdings, see sec. 11, and pp. 37, cix.)

	Claim for Disturbance. (Sec. 3.)	Claim for Improvements. (Secs. 4, 5, 8.)	Claim for purchase of Good-will, made with Landlord's consent. (Sec. 7,)
HOLDINGS FROM YEAR TO YEAR, *created after the 1st of August*, 1870 :—			
1. Valued at £50 per annum and upwards.	Allowed; unless tenant has contracted in writing not to claim.	Allowed; unless tenant has contracted in writing not to claim.	Allowed; unless tenant has contracted in writing not to claim.
2. Valued under £50 per annum.	Allowed. Contract not to claim prohibited for twenty years, ending 1st Jan., 1891.	Allowed. Contract not to claim for suitable improvements prohibited.	Allowed.
LEASES *granted after the 1st of August*, 1870 :—			
1. Under thirty-one years.	Allowed; unless the tenant, where he has a holding valued at £50 per annum and upwards, has contracted in writing not to claim.	Allowed; unless the tenant, where he has a holding valued at £50 per annum and upwards, has contracted in writing not to claim.	Allowed; unless the tenant, where he has a holding valued at £50 per annum and upwards, has contracted in writing not to claim.
2. For thirty-one years and upwards.	None.	Allowed; unless the tenant, where he has a holding valued at £50 per annum and upwards, has contracted in writing not to claim; but claim is confined to permanent buildings, reclamation of waste land, and unexhausted tillages and manures; with away-going crops.	

CLAIMS FOR COMPENSATION OR OTHERWISE; HOW MADE, DECIDED, AND ENFORCED.

The landlord, if an absolute owner, can agree with the tenant as to the amount of compensation payable under the Act. A "limited owner" is empowered to do the like on complying with the conditions prescribed. The court, after notice given to the next remainderman, may, on payment of the compensation, make an order, charging the holding with an amount in favour of the limited owner, at the rate of £5 per cent. for each £100 paid to the tenant, and to last thirty-five years (sec. 27).

If the parties do not agree, the Act directs the claim to be made, when the tenant is about to quit his holding, by serving a notice in writing upon the landlord or his agent within the time prescribed by the rules. This notice must state particulars, dates, and periods of claim; and where the claim is for disturbance, the number of years' rent claimed must be specified (sec. 16, rules 1-9). Unless the landlord, within the time prescribed by the rules, serves a notice, stating that he disputes the whole or portion of the claim, he will be deemed to have admitted it. The service of such a notice by the landlord will constitute a dispute which, unless terminated by agreement, must be decided by the "court," (sec. 17, rules 10-15).

The court takes one of two shapes—the Civil Bill Court or a Court of Arbitration (sec. 22). The parties may agree to settle their dispute by ARBITRATION, and the referees, chosen as prescribed by the Act (see schedule at the end of Act), shall constitute the "court." This is to have, generally, the same powers as the Civil Bill Court. It cannot, however, punish for contempt, or enforce its award, but may report the offender to, and have the award recorded and enforced by, the Civil Bill Court. The award shall not be vitiated by technical defects, subject to appeal, or removable by *certiorari* (sec. 25, rules 41-45). In default of any agreement to arbitrate, the dispute must be decided by the CIVIL BILL COURT, which must make its order in writing, and state particulars (sec. 19, rules 20-33). Its judgment is subject to an appeal

to the *Assize-going Judges*, or, for the County of Dublin, to two common law judges, who may reserve questions of law for the consideration of the *Court for Land Cases Reserved*, sitting in Dublin, (secs. 23, 24; rules 38-40).

The Court of Civil Bills or Arbitration has received a very extensive equitable jurisdiction, under which it is empowered and bound to take into consideration any claim, objection, or set-off, or any default or unreasonable conduct on either side, affecting the matter in dispute, and to strike the balance as justice may require; also to disallow the claim for disturbance, if the landlord can show that he "has been and is" willing to continue the tenant on just and reasonable terms, which "have been and are" unreasonably refused by the tenant (sec. 18).

The award or judgment must determine the whole amount payable for compensation, and apportion the same, where several persons occupy distinct relations of landlord and tenant with reference to the one holding; but this provision only applies to non-customary holdings (sec. 20).

The Act furnishes the tenant a strong guarantee for his rights, by enacting that until the compensation awarded has been paid to him, or deposited in court, the landlord cannot evict. But this provision does not entitle the tenant to hold possession against a *superior* landlord, who is not liable to pay compensation. The landlord may deposit the compensation in court, and the tenant cannot, without its special leave, draw the amount until he shall have given up possession (rules 34-37). If, after the award, but before possession is given up, the tenant damages the holding, the court may award compensation, including *mesne* rates (sec. 21).

Powers of Limited Owners.

The Act defines the term "limited owners," pointing out the classes comprehended under it (sec. 26). The "limited owner" is empowered to agree with the tenant as to the amount of compensation, and to obtain, after giving notice to the remainderman, a charging order in respect of the money so paid, in the form of an annuity at the rate of £5 for every £100 of compensation, to last for thirty-five years, in favour

of the limited owner, with a priority pointed out by the Act (sec. 27; rules 46-53).

The "limited owner" is empowered to grant agricultural leases not exceeding thirty-five years, at a *fair* rent, and on certain prescribed conditions. They may be confirmed by the court, on the application of either landlord or tenant, and such confirmation shall be deemed conclusive evidence of the lease being within the powers of the Act. Leases under the Act shall bind the lessor and all parties interested subsequent to him. This power is to be in addition to all other leasing powers (secs. 28, 29, 30; rules 54-58).

PART II. AND PORTION OF PART III.

SALE OF LANDS AND ADVANCES TO TENANTS.*

The second part, and portion of the third part of the Act, are framed with a view to promote the gradual formation of a Farmer-Proprietary in Ireland. These enactments authorise agreements between owners, absolute or limited, and tenants, for the purchase of their agricultural or pastoral holdings; and empower the Landed Estates Court to promote purchases by tenants on proceedings for the sale of estates. Facilities are given for the completion of such dealings by Government loans through the agency of the Board of Works. Such advances may be made either before or after the tenant has agreed to purchase, or has bought in the Landed Estates Court (35 & 36 Vict., c. 32, sec. 1, 1).

Sales under the Act can be carried out through the Landed Estates Court, which will execute a conveyance to the tenant conferring a parliamentary or indefeasible title.

But the tenant may also deal directly with his landlord without intervention of the Landed Estates Court, provided the Board of Works is satisfied to advance the money (35 & 36 Vict., c. 32, sec. 1, 3).

* In preparing the analysis of Parts. II. and III., I have been indebted to the edition of the Land Act by Mr. W. G. Brooke, which may be consulted with advantage by the legal profession. I understand that this portion of the commentary was contributed by the Recording Officer of the Landed Estates Court, Mr. R. D. Urlin.

Sales may originate in two ways; first, by AGREEMENT between an individual tenant (sec. 32) or the tenants collectively, and the landlord (sec. 47); secondly, under proceedings for PUBLIC SALE in the Landed Estates Court (sec. 46).

A. PURCHASES BY AGREEMENT WITH LANDLORD.

These are of two sorts, viz., either (1) agreements by individual tenants (sec. 32), or (2) agreements by the tenants collectively with other purchasers (sec. 47).

The tenant agreeing to the purchase of his holding must either be entitled to actual possession, or have obtained the consent in writing of every sub-tenant to the sale (P. C. R. 4).

The Act specifies three classes of landlords who can agree to sell to their tenants, singly or collectively, viz.:—

Firstly. "Absolute owners."

Secondly. "Tenants for life."

Thirdly. "Other limited owners."

These terms are defined by the Act (sec. 33). They embrace a very great variety of landed proprietors, both individual and corporate owners.

The form of agreement is regulated by the Rules of the Privy Council (R. 2, form No. 1).

(1.) *Agreement with Landlord to purchase by individual tenants.*

The agreement should be put into writing, in duplicate, properly signed and attested, each copy bearing a sixpenny agreement stamp. Landlord and tenant may jointly, or either of them, with the assent of the other, may separately, apply to the Landed Estates Court to carry out the sale to the tenant of his holding (sec. 32). The Rules of the Privy Council prescribe the form of statement (R. 3, forms 2, 3, 4, 5) and mode of proceeding in the Landed Estates Court (R. 5-21).

The Landed Estates Court may require the landlord to deposit a sum as security for costs (P. C. R. 7); and will make certain preliminary inquiries directed by the Act (sec. 34). For the due protection of remaindermen, incumbrancers, nd others interested in holdings sold by "limited owners," enquiry will, in such cases, embrace the "sufficiency of

the price" (sec. 34). The court will then investigate the title, and, on payment of the purchase-money, will execute a conveyance in favour of the tenant, conferring an indefeasible title, freed from all incumbrances, save quit rents, rights of common, drainage-charges, the terminable annuity payable to the Board of Works for the purchase money advanced, and other similar charges specified in the Act (secs. 35, 36; P. C. R. 9; form, 8). The court can direct the purchase-money to be lodged in bank (P. C. R. 7), and will see to its proper distribution, charging a per-centage fee on each sale, and paying same into the Exchequer (P. C. R. 11). The costs of distributing the purchase-money, unless caused by disputed titles, or through neglect to comply with rules, will not be charged on the purchase-money, but paid out of public funds (secs. 37, 38, 39, 40; P. C. R. 12). The court is empowered to apportion rents and to decide all questions. The Privy Council was empowered to make rules as to the proceedings under Part II. (sec. 4); and these have accordingly been made, see below, pp. lxx.-lxxxiv. The tenant purchasing, or his successor, where an advance is obtained by the Board of Works, cannot, without their consent, assign, mortgage, sub-divide, or sublet, so long as the annuity charged lasts, under penalty of forfeiting the part so dealt with (sec. 44); but this does not extend to labourers' allotments, not exceeding half an acre (35 & 36 Vict. c. 32, sec. 1, 4). (See also Penefather's estate, 6 Ir. L. T. 61, and below, p. cxii.).

(2.) *Agreement to purchase by tenants collectively, jointly with other purchasers who are not tenants.*

Cases may also occur where the landlord does not choose to sell portions of his property, but is willing to sell the whole. In order to facilitate such arrangements, where the entire tenantry cannot or do not wish to purchase their holdings, the Act provides as follows:—If the tenants, comprising four-fifths in value of the estate, arrange to purchase, and other purchasers can be found to buy the residue, the sale may be carried out under the Act as if the whole of the purchasers were tenants; except that the purchasers of the residue will only get an advance not exceeding one-half of their purchase-money. It would seem that the provision against assigning,

mortgaging, subletting, and subdividing (sec. 44), applies to the purchasers who are not tenants (sec. 47), In other respects the provisions which regulate agreement No. 1 (p. 116) apply to agreement No. 2.

B. Purchases under Proceedings for Public Sale in the Landed Estates Court.

When any property has been brought into the Landed Estates Court, with a view to a public sale, and an absolute order for sale made, the Act directs that all reasonable facilities shall be given, consistently with the interests of parties in the estate, to occupying tenants desirous of purchasing their holdings (sec 46).

The tenant purchasing, or his successor, where an advance is obtained from the Board of Works, cannot, without their consent, assign, mortgage, subdivide or sublet, so long as the annuity charged lasts, under penalty of forfeiture of the part so dealt with (sec. 45);* but this does not extend to labourers' allotments not exceeding half an acre (35 & 36 Vict. c. 32, sec. 1, 4).

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* The following useful remarks are token from Mr. W. G. Brooke's edition, of the Act, p. 83.

"A tenant who wishes under the present Act to become his 'own landlord,' and who is aware that the estate is about to be sold in the L. E. Court, should first ascertain whether there is any chance of an offer for purchase at a reasonable rate being received. An enquiry of the solicitor having carriage of the sale, or at the judge's chambers, will usually suffice to show whether a public sale is imperative. The proper time to apply to have the holding sold as a separate lot will be *after* the service of the customary 'Notice to tenants, &c.,' and before the final settlement and approval of the rental.

"Between these two steps there is an interval of more than a month, which will afford ample time for the tenant to endeavour to accomplish the purchase of his own holding, either with or without the aid of an advance from the Board, under section 45.

"The tenant is at liberty (personally or by a solicitor) to attend on the setting of the rental by the Examiner, and then to apply to have his holding made into a separate lot; and if his request be not acceded to, he may apply to the judge, under the 26th gen. rule of the Court, before the final approval of the rental."

ADVANCES TO TENANTS.

The Board of Works is empowered to assist the purchaser in all the above-mentioned cases, by advancing a certain proportion of the price, and this advance may be applied for either before or after the agreement for sale, or the purchase by tenant in the Landed Estates Court (35 & 36 Vict., c. 32, sec. 1, 1). The forms of application for the loan will be found below (p. lxxxviii). As regards sales under heads A (1), p. 116, and B, p. 118, the tenant may, on application to the Board, (they being satisfied with the security), obtain an advance not exceeding two-thirds of the purchase money. On the advance being made, the holding shall be charged with an annuity of £5 for every £100 of such advance, payable to the Board for thirty-five years, subject to redemption at an earlier period if desired (secs. 44, 45, 51). As regards sales under head A (2), p. 117, advances may be made to tenants to the extent and on the terms just stated. The Board is also authorised to make like advances, but only to the extent of one-half the purchase money, to other purchasers, of the remaining one-fifth in value of the estate, either collectively, on security of the entire residue, or to such purchasers severally, on the security of their separate portions bought (sec. 47). The charging order in favour of the Board of Works will be made by the Landed Estates Court in all cases where the sale is made by it or through its medium (sec. 45, and 35 & 36 Vict., c. 32, secs. 1, 2).

RESIDUE OF PART III.

ADVANCES TO LANDLORDS, AND POWERS OF BOARD OF WORKS.

The Board of Works is authorised to make advances to landlords in two cases, viz., in respect of (1) compensation payable to tenant; (2) improvement of waste lands.

(1) *Advances in respect of compensation to tenants.*

Advances under this head cannot be made where the tenant has been "disturbed" by the landlord (see. p. 100). In other cases, the compensation agreed on or awarded, or so much

CLASSIFICATION OF HOLDINGS.*

ULSTER TENANT-RIGHT HOLDINGS.

(1.) Within the Province of Ulster (sec. 1.) }
(2.) Outside the Province of Ulster (sec. 2.) } See Observations, pp. 63-73.

NON-CUSTOMARY HOLDINGS.

HOLDINGS EXISTING ON THE 1ST OF AUGUST, 1870.

	Claim for Disturbance. (sec. 3).	Claim for Improvements. (secs. 4, 5, 8).	Claim for purchase of Good-will, made with Landlord's Consent. (sec. 7).
HOLDINGS FROM YEAR TO YEAR, *existing on 1st August*, 1870 :—		Allowed ; unless held under written contract, which expressly excludes the same ; or unless the tenant where he has a holding valued at £50 and upwards, has contracted in writing not to claim. But as to improvements made *before the 1st of August*, 1870, only for permanent buildings and reclamation of waste land, and for such other improvements as were made within twenty years before making the claim : as to proof of same, see before, p. 106, sec. 5. For certain cases of improvements excepted, see sec. 4, 1 (*b*), (*c*), (*d*), (*e*).	Allowed.
1. †Valued above £100 per annum.	None.		
2. Valued below and up to £100 per annum :			
(1.) If disturbed by *head* landlord ;	None.		
(2.) If disturbed by *immediate* landlord.	Allowed ; unless the tenant, where he has a holding valued at £50 or upwards, has contracted in writing not to claim.		

* See Practical Analysis, p. 98.
† This term throughout refers to a valuation under the Acts for valuing rateable property in Ireland.

HOLDINGS EXISTING ON THE 1ST OF AUGUST, 1870.

	Claim for Disturbance. (sec. 3).	Claim for Improvements. secs. 4, 5. 8).	Claim for purchase of Good-will, made with Landlord's Consent. (sec. 7).
LEASES *granted before the 1st of August*, 1870.	None.	Allowed; unless they are expressly excluded by the lease (sec. 4, 2); or landlord prohibits making improvements in writing, and court deems the same to be calculated to diminish the general value of estate (sec. 4, 1 (*b*). Where the lease was granted for thirty-one years or upwards, or for a term of life or lives, with or without concurrent term of years, which lease shall have existed for thirty-one years before making claim, the claim (unless the lease specially provides the contrary) can only be made for permanent buildings, reclamation of waste land, and unexhausted tillages or manures (sec. 4, 3).	None.

Tenants of holdings created *after the* 1*st of August*, 1870, at an acreable rent, will, in the absence of a renewal to the contrary, be exempted from rent for any portion dedicated to a* PUBLIC ROAD (sec. 68).

TENANCIES-AT-WILL, *after the* 1*st of August*, 1870, are practically abolished, the tenant being declared entitled to notice to quit and compensation as if he had been a yearly tenant. *Bona fide* lettings for temporary convenience or necessity are excepted (sec. 69.)

LANDLORD AND TENANT (IRELAND) ACT,

33 & 34 VICT., CAP. 46.

The Act came into force on the 1st of August, 1870.

SUBJECTS OF THE CLAUSES.

PART I.

LAW OF COMPENSATION TO TENANTS.

Claim to Compensation.

Proceedings in respect of Claims.

PART IV.

SUPPLEMENTAL PROVISIONS.

As to Legal Proceedings and Court.

PART V.

MISCELLANEOUS.

Definitions.

CHAPTER 46.

An Act to amend the Law relating to the Occupation and Ownership of Land in Ireland. [1st August, 1870.]

WHEREAS it is expedient to amend the law relating to the occupation and ownership of land in Ireland.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

Law of Compensation to Tenants.

Claim to Compensation.

Legality of Ulster tenant-right custom.

1. The usages prevalent in the province of Ulster, which are known as, and in this Act intended to be included under, the denomination of the Ulster tenant-right custom, are hereby declared to be legal, and shall, in the case of any holding in the province of Ulster proved to be subject thereto, be enforced in manner provided by this Act.

Where the landlord has purchased or acquired or shall hereafter purchase or acquire from the tenant the Ulster tenant-right custom to which his holding is subject, such holding shall thenceforth cease to be subject to the Ulster tenant-right custom.

A tenant of a holding subject to the Ulster tenant-right custom, and who claims the benefit of such custom, shall not be entitled to compensation under any other section of this Act; but a tenant of a holding subject to such custom, but not claiming under the same, shall not be barred from making a claim for compensation, with the consent of the Court, under any of the other sections of this Act, except the section relating to compensation in respect of payment to incoming tenant; and where such last-mentioned claim has been made, and allowed, such holding shall not be again subject to the Ulster tenant-right custom.

Legality of tenant custom other than Ulster custom.

2. If, in the case of any holding not situate within the province of Ulster, it shall appear that an usage prevails which in all essential particulars corresponds with the Ulster tenant-right custom, it shall in like manner, and subject to the like conditions, be deemed legal, and shall be enforced in manner provided by this Act.

Where the landlord has purchased or acquired or shall hereafter purchase or acquire from the tenant the benefit of such usage as aforesaid to which his holding is subject, such holding shall thenceforth cease to be subject to such usage.

A tenant of any holding subject to such usage as aforesaid, and who claims the benefit of the same, shall not be entitled to claim compensation under any other section of this Act, but a tenant of a holding not claiming the benefit of such usage shall not be barred from making a claim for compensation with the consent of the Court, under any of the other sections of this Act; and where such last-mentioned claim has been made and allowed, such holding shall not be again subject to such usage as aforesaid.

Compensation in absence of custom.

3. Where the tenant of any holding held by him under a tenancy created after the passing of this Act is not entitled to compensation under sections one and two of this Act, or either of such sections, or if entitled does not seek compensation under said sections or either of

them, and is disturbed in his holding by the act of the landlord, he shall be entitled to such compensation for the loss which the Court shall find to be sustained by him by reason of quitting his holding, to be paid by the landlord as the Court may think just, so that the sum awarded does not exceed the scale following: that is to say,

In the case of holdings valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of—

(1.) £10 and under, a sum which shall in no case exceed seven years rent;

(2.) Above £10 and not exceeding £30, a sum which shall in no case exceed five years rent;

(3.) Above £30 and not exceeding £40, a sum which shall in no case exceed four years rent;

(4.) Above £40 and not exceeding £50, a sum which shall in no case exceed three years rent:

(5.) Above £50 and not exceeding £100, a sum which shall in no case exceed two years rent;

(6.) Above £100, a sum which shall in no case exceed one years rent;

But in no case shall the compensation exceed the sum of £250.

Any tenant in a higher class of the scale may, at his option, claim compensation under a lower class, provided such compensation shall not exceed the sum to which he would be entitled under such lower class on the assumption that the annual value of his holding is reduced to the sum (or where two sums are mentioned, the highest sum) stated in such lower class, and that his rent is proportionally reduced.

Provided that no tenant of a holding valued at a yearly sum, exceeding £10, and claiming under this section more than four years rent, and no tenant of a holding valued at a yearly sum not exceeding £10, and claiming as aforesaid more than five years rent, shall be entitled to make a separate or additional claim for improvements other than permanent buildings and reclamation of waste land.

Provided that—

(1.) Out of any moneys payable to the tenant under this section all sums due to the landlord from the tenant or his predecessors in title in respect of rent or in respect of any deterioration of a holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement, may be deducted by the landlord, and also any taxes payable by the tenant due in respect of the holding, and not recoverable by him from the landlord:

(2.) A tenant of a holding who at any time after the passing of this Act subdivides such holding, or sublets the same or any part thereof without the consent of the landlord in writing, or, after he has been prohibited in writing by the landlord or his agent in so doing, lets the same or any part thereof in conacre, save for the purposes of being solely used and which shall be solely used for the growing of potatoes or other green crops, the land being properly manured, shall not, nor shall any sub-tenant of or under any such tenant as last aforesaid, be entitled to any compensation under this section:

(3.) A tenant of a holding under a lease made after the passing of this Act, and granted for a term certain of not less than thirty-one years, shall not be entitled to any compensation under this section, but he may claim compensation under section four of this Act.

The tenant of any holding valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of not more than one hundred pounds, and held by him under a tenancy from year to year existing at the time of the passing of this Act, shall, if disturbed by the act of his immediate landlord, be entitled to compensation under and subject to the provisions of this section.

Any contract made by a tenant by virtue of which he is deprived of his right to make any claim which he would otherwise be entitled to make under this section shall, so far as relates to such claim, be void both at law and in equity; this provision shall be subject to the enactment contained in the section of this Act relating to the partial exemption of certain tenancies, and remain in force for twenty years from the first day of January one thousand eight hundred and seventy-one, and no longer, unless Parliament shall otherwise determine.

Compensation in respect of improvements.

4. Any tenant of a holding who is not entitled to compensation under sections one and two of this Act, or either of such sections, or if entitled does not make any claim under the said sections, or either of them, may on quitting his holding, and subject to the provisions of section three of this Act, claim compensation to be paid by the landlord under this section in respect of all improvements on his holding made by him or his predecessors in title.

Provided that—

Exception of certain improvements.

(1.) A tenant shall not be entitled to any compensation in respect of any of the improvements following; that is to say,—

(*a*) In respect of any improvement made before

the passing of this Act, and twenty years before the claim of such compensation shall have been made, except permanent buildings and reclamation of waste land; or,

(b.) In respect of any improvement prohibited in writing by the landlord as being and appearing to the Court to be calculated to diminish the general value of the landlord's estate, and made within two years after the passing of this Act, or made during the unexpired residue of a lease granted before the passing of this Act; or,

(c.) In respect of any improvement made either before or after the passing of this Act in pursuance of a contract entered into for valuable consideration therefor; or,

(d.) (Subject to the rule in this section mentioned as to contracts) in respect of any improvement made, either before or after the passing of this Act, in contravention of a contract in writing not to make such improvement; or,

(e.) In respect of any improvement made either before or after the passing of this Act which the landlord has undertaken to make, except in cases where the landlord has failed to perform his undertaking within a reasonable time:

Exception of certain tenancies.

(2.) A tenant of a holding under a lease or written contract made before the passing of this Act shall not be entitled on being disturbed by the act of the landlord in or on quitting his holding to any compensation in respect of any improvement, his right to which compensation is expressly excluded by such lease or contract:

(3.) A tenant of a holding under a lease made either before or after the passing of this Act for a term certain of not less than thirty-one years, or in case of leases made before the passing of this Act for a term of a life or lives with or without a concurrent term of years, and which leases shall have existed for thirty-one years before the making of the claim, shall not be entitled to any compensation in respect of any improvement unless it is specially provided in the lease that he is entitled to such compensation, except permanent buildings and reclamation of waste land, and tillages or manures, the benefit of which tillages or manures is unexhausted at the time of the tenant quitting his holding:

(4.) A tenant of a holding, who is quitting the same voluntarily, shall not be entitled to any compensation in respect of any

improvement when it appears to the Court that such tenant has been given permission by his landlord to dispose of his interest in his improvements to an incoming tenant upon such terms as the Court may deem reasonable, and the tenant has refused or neglected to avail himself of such permission:

(5.) Out of any moneys payable to the tenant under this section all sums due to the landlord from the tenant or his predecessors in title in respect of rent, or in respect of any deterioration of the holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement, may be deducted by the landlord, and also any taxes payable by the tenant due in respect of the holding and not recoverable by him from the landlord.

Any contract between a landlord and a tenant whereby the tenant is prohibited from making such improvements as may be required for the suitable occupation of his holding and its due cultivation, shall be void both at law and in equity, but no improvement shall be deemed to be required for the suitable occupation of a tenant's holding and its due cultivation which appears to the Court to diminish the general value of the estate of the landlord, nor shall anything in this Act contained authorise or empower any tenant or occupier, without the previous consent in writing of the landlord, to break up or till any land or lands usually let, occupied, or used as grazing or grass lands or let expressly as grazing or meadow land, or to cut timber without the consent of the landlord; provided that the tenant may cut timber planted and registered by him or his predecessors in title.

Any contract made by a tenant by virtue of which he is deprived of his right to make any claim which he would otherwise be entitled to make under this section shall, so far as relates to such claim, be void both at law and in equity, subject, however, to the enactment contained in the section of this Act relating to the partial exemption of certain tenancies, and to the provision in this section as to any improvement made in pursuance of a contract entered into for valuable consideration therefor.

Where a tenant has made any improvements before the passing of this Act on a holding held by him under a tenancy existing at the time of the passing thereof, the Court in awarding compensation to such tenant in respect of such improvements shall, in reduction of the claim of the tenant, take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made.

5. For the purposes of compensation under this Act in respect of improvements on a holding which is not proved to be subject either to the Ulster tenant-right custom or to such usage as aforesaid, or where the tenant does not seek compensation in respect of such custom or usage, all improvements on such holding shall, until the contrary is proved, be deemed to have been made by the tenant or his predecessors in title, except in the following cases where compensation is claimed in respect of improvements made before the passing of this Act:

Presumption in respect of improvements.

(1.) Where such improvements have been made previous to the time at which the holding in reference to which the claim is made was conveyed on actual sale to the landlord or those through whom he derives title:

(2.) Where the tenant making the claim was tenant under a lease of the holding in reference to which the claim is made:

(3.) Where such improvements were made twenty years or upwards before the passing of this Act:

(4.) Where the holding upon which such improvements were made is valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of more than one hundred pounds:

(5.) Where the Court shall be of opinion that in consequence of its being proved to have been the practice on the holding, or the estate of which such holding forms part, for the landlord to make such improvements, such presumption ought not to be made:

(6.) Where from the entire circumstances of the case the Court is reasonably satisfied that such improvements were not made by the tenant or his predecessors in title:

Provided always, that where it is proved to have been the practice on the holding, or the estate of which such holding forms part, for the landlord to assist in making such improvements, such presumption shall be modified accordingly.

6. Any landlord or tenant who may be desirous of preserving evidence of any improvements made by himself or by his predecessors in title before or after the passing of this Act may at any time (subject to the provisions herein-after contained) file a schedule in the Landed Estates Court specifying such improvements, and claiming the same as made by himself or his predecessors in title, and such schedule so filed shall be primâ facie evidence that such improvements were made as therein mentioned; Provided always, that notice in writing of the intention to file such schedule, together

Permissive registration of improvements.

with a copy thereof, shall be given by the landlord to the tenant for the time being of the holding on which such improvements shall have been made (or by the tenant to the landlord, as the case may be,) within the prescribed time before applying to the Landed Estates Court to file the same; and if the person receiving such notice shall dispute the claim made by such schedule, either wholly or in part, he shall be at liberty within the prescribed time and in the prescribed manner to apply to the Civil Bill Court to determine the matter in difference, and in such case such schedule shall not be filed unless or until leave shall have been given to file the same either in its original or in any amended form by the Civil Bill Court; provided also that before filing any such schedule proof shall be made in the Landed Estates Court by statutory declaration that the notice hereby required has been duly given, and that no application has been made within the prescribed time by the party receiving such notice to the Civil Bill Court, or (if any such application has been made) that leave has been given by the Civil Bill Court to file such schedule.

Compensation in respect of payment to incoming tenant.

7. Where any tenant of a holding does not claim or has not obtained compensation under the sections one, two, or three of this Act, and it is proved to the satisfaction of the Court that any such tenant or that his predecessors in title on coming into his holding, paid money or gave money's worth with the express or implied consent of the landlord on account of his so coming into his holding, the Court shall award to such tenant on quitting his holding in respect of the sum so paid such compensation as it thinks just, having regard to the circumstances of the case; but such tenant shall not be entitled to any compensation under this section when it appears to the Court that such tenant has been given permission by the landlord to obtain such satisfaction from an incoming tenant in respect of the money so paid, or the money's worth so given by him, and on such terms as the Court may think reasonable, and such tenant has refused or neglected to avail himself of such permission; moreover where the money or money's worth paid or given by any tenant claiming compensation under this section on coming into his holding was paid or given in whole or in part in respect or as covering the value of any improvements on the holding, care shall be taken that such tenant shall not receive compensation in respect of the same improvements under this section and also under some other section of this Act; provided that out of any moneys payable to the tenant under this section all sums due to the landlord from the tenant or his predecessors in title in respect of rent, or in respect of any deterio-

ration of a holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement, and also any taxes payable by the tenant due in respect of the holding, and not recoverable by him from the landlord, may, if not deducted under the provisions of section four of this Act, be deducted by or on behalf of the landlord: Provided always, that this section shall not apply when such money or money's worth has been paid during the existence of a lease made before the passing of this Act.

Compensation in respect of crops.

8. Where a holding is proved to be subject to the Ulster tenant-right custom or such usage as aforesaid, and where the tenant claims under such custom or usage, and such custom or usage extends to away-going crops, the compensation payable in respect of away-going crops shall be dealt with according to the custom or usage, but the tenant of every other holding, which is not proved to be subject to the Ulster tenant-right custom or such usage as aforesaid, or in respect of which no claim is made under such custom or usage, shall, in the absence of any agreement in writing to the contrary, on quitting his holding, be entitled to all his away-going crops, or, at the option of the landlord, to be paid the value of the same.

Limitation as to disturbance in holding.

9. For the purposes of this Act ejectment for non-payment of rent, or for breach of any condition against assignment, sub-letting, bankruptcy, or insolvency, shall not be deemed disturbance of the tenant by act of the landlord; and for the purposes of this Act a person who is ejected for non-payment of rent, or for breach of any such condition as aforesaid, and is not disturbed by act of the landlord within the meaning of this Act, shall stand in the same position in all respects as if he were quitting his holding voluntarily; providing that in the case of a person claiming compensation on the determination by ejectment for non-payment of rent of a tenancy existing at the time of the passing of this Act, and continuing to exist without alteration of rent up to the time of such determination, the Court may, if it think fit, treat such ejectment as a disturbance if the arrear of rent in respect of which it is brought did not wholly accrue within the three previous years, and if any earlier arrear remained due from the tenant at the time of commencing the ejectment, or if, in case of any such tenancy of a holding held at an annual rent not exceeding fifteen pounds, the Court shall certify that the non-payment of rent causing the eviction has arisen from the rent being an exorbitant rent; provided that no tenant who shall have given notice of surrender, and afterwards refuse to give up possession in pursuance of such notice, shall be entitled to any compensation under sec-

tion three of this Act, though evicted by the landlord in a suit founded on such notice.

Exception in case of lands required for labourers' cottages.

10. Any landlord may, after six months notice in writing to be served upon the tenant or left at his house, resume possession from a yearly tenant of so much land (not to exceed in the whole one twenty-fifth part of any individual holding) as he may require for the bona fide purpose of erecting thereon one or more labourers cottages, with or without gardens attached, and such resumption of land shall not, unless the Court shall be of opinion that same was unreasonable, be deemed a disturbance of the tenant within the meaning of this Act, and shall not subject the landlord to any claim for compensation, except in respect of improvements, beyond an abatement of rent proportionate to the annual value of the land so taken by the landlord.

Derivative title of tenant.

11. For the purposes of this Act a tenant shall be deemed to have derived his holding from the preceding tenant if he has paid to such preceding tenant any money or given to him any money's worth in respect of his holding, or has taken such holding by assignment or operation of law from the preceding tenant; and where a succession of tenants have derived title each from the other, the earlier in such succession shall be deemed to be the predecessor of the later, and the later in such succession shall be deemed to be the successor of the earlier.

Partial exemption of certain tenancies.

12. A tenant of a holding which is not proved to be subject to the Ulster tenant-right custom or such other usage aforesaid, whose holding, or the aggregate of whose holdings in Ireland, is valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of not less than fifty pounds, shall not be entitled to make any claim for compensation under any provision of this Act in cases where the tenant has contracted in writing with his landlord that he will not make any such claim.

Restriction as to compensation in certain cases of assignment.

13. Where the holding in respect of which compensation is claimed under section three of this Act is held under a tenancy from year to year existing at the time of the passing of this Act, and such tenancy is assigned without the consent of the landlord, and the landlord does not accept the assignee as his tenant, no compensation shall be payable by the landlord under the said section in any of the cases following:

(1.) Where the rent of such holding is in arrear at the time of such assignment so as to render the tenant liable to eviction for non-payment of rent, and such arrear is due by the tenant:

(2.) Where such holding forms part of an estate upon which the assignments of holdings without the consent or approval of the landlord is contrary to or not warranted by the practice prevalent upon such estate :

(3.) Where the Court shall be of opinion that the refusal of the landlord to accept such assignee as tenant is a reasonable refusal :

Provided always, that the transmission of a tenancy by bequest to the husband or wife, or to any one child or grandchild, or to any one brother or sister, or to any one child or grandchild of a brother or sister of the tenant, or the devolution of a tenancy by operation of law upon any intestacy or marriage, shall not be deemed an assignment within the meaning of this section.

Eviction in certain cases not be be deemed a disturbance.

14. Where it is proved to the Court that the tenant of any holding held under a tenancy from year to year existing at the time of the passing of this Act is evicted by the landlord by reason of the persistent exercise by such tenant of any right not necessary for the due cultivation of his holding, and from which such tenant is debarred by express or implied agreement with his landlord, such eviction shall not be deemed a disturbance of the tenant by the act of the landlord ; or where the tenant of any holding so held as last aforesaid at the time of the passing of this Act is evicted by the landlord by reason of the tenant's unreasonable refusal to allow the landlord, or any person or persons authorised by him in that behalf, he or they making reasonable amends and satisfaction for any injury to be done or occasioned thereby, to enter upon the holding for any of the purposes following, that is to say,

Mining or taking minerals ;

Quarrying or taking stone, marble, gravel, sand or slate ;

Cutting or taking timber or turf ;

Opening or making roads, drains, and watercourses ;

Viewing or examining the state of the holding and all buildings or improvements thereon ;

Hunting, shooting, or fishing, or taking game or fish ;

Such eviction shall not be deemed a disturbance of the tenant by the act of the landlord, unless it shall be shown that the landlord is persisting in such eviction after such refusal has been withdrawn by the tenant.

Exemption of certain lands.

15. No compensation shall be payable under the preceding provisions of this Act in respect of—

(1.) Any demesne land, or any holding ordinarily termed "townparks" adjoining or near to any city or town which shall bear an increased value as accommo-

dation land over and above the ordinary letting value of land occupied as a farm, and shall be in the occupation of a person living in such city or town, or the suburbs thereof, or any holding let to be used wholly or mainly for the purpose of pasture, and valued under the Acts relating to the valuation of property in Ireland at an annual value of not less than fifty pounds, or any holding let to be used wholly or mainly for the purposes of pasture the tenant of which does not actually reside upon the same, unless such holding adjoins or is ordinarily used with the holding on which such tenant actually resides: Provided that nothing herein contained shall prevent the tenant of any such holding making any claim which he otherwise would be entitled to make under sections four, five, and seven of this Act; or,

(2.) Any holding which a tenant holds by reason of his being a hired labourer or hired servant; or,

(3.) Any letting in conacre or for the purposes of agistment or for temporary depasturage; or,

(4.) Any holding let and expressed in the document by which it is let to be so let for the temporary convenience or to meet a temporary necessity either of the landlord or tenant, and the letting of which has determined by reason of the cause having ceased which gave rise to the letting:

(5.) Any cottage allotment not exceeding a quarter of an acre.

Proceedings in respect of Claims.

16. Every tenant entitled under this Act to make any claim in respect of any right or for payment of any sums due to him by way of compensation, and about to quit his holding, may within the prescribed time serve a notice of such claim on his landlord, or in his absence his known agent; the notice shall be in writing in the prescribed form, and shall state the particulars of such claim, subject to such amendment as the Court may allow, together with the dates at which and the periods within which such particulars are severally alleged to have accrued, and, where such claim or any part of the same is in respect of compensation under the provisions of section three of this Act, the number of years rent claimed shall be specified.

Proceedings by tenant in respect of claims.

17. On the receipt of the notice the landlord shall be deemed to have admitted the claim made by the tenant, unless within the prescribed time and in the prescribed manner he serves a notice on the tenant stating that he disputes the whole or some portion of the claim

Proceedings by landlord in respect of claims.

made by the latter, and upon service of such notice by a landlord on the tenant a dispute shall be deemed to have arisen between the landlord and the tenant as to the whole or a portion of such claim, and such dispute shall be decided by the Court, unless within the time and in the manner prescribed in that behalf such dispute shall have been settled by agreement between the landlord and tenant.

Equities between landlord and tenant.

18. On the hearing of any dispute between landlord and tenant under this Act either party may make any claim, urge any objection to the claim of the other, or plead any set-off such party may think fit (including in the case of a landlord any moneys paid on account of the purchase of the right of the tenant under the Ulster tenant-right custom of such usage as aforesaid), and the Court shall take into consideration any such claim, objection, or set-off, also any such default or unreasonable conduct of either party as may appear to the Court to affect any matter in dispute between the parties, and shall admit, reduce, or disallow altogether any such claim, objection, or set-off made or pleaded on behalf of either party as the Court thinks just, giving judgment on the case with regard to all its circumstances, including such consideration of conduct as aforesaid, and the Court shall have jurisdiction at the hearing of any such dispute to ascertain what sums, if any, shall be deemed due by the tenant to the landlord under sections three, four, and seven of this Act, or any set-off in respect of unliquidated or liquidated damages under said sections, or any of them; and in any case in which compensation shall be claimed under section three of this Act, if it shall appear to the Court that the landlord has been and is willing to permit the tenant to continue in the occupation of his holding upon just and reasonable terms, and that such terms have been and are unreasonably refused by the tenant, the claim of the tenant to such compensation shall be disallowed.

Order of Court to be in writing &c.

19. In every case of dispute between landlord and tenant, heard before the Civil Bill Court, the order of the Court shall be reduced into writing in the form of a decree or award (as the case may be), and shall state the items of claim allowed, that is to say, the particulars of loss sustained by the tenant in quitting his holding, and of the improvements and payment to his predecessor in title in respect to which compensation may have been awarded to the tenant under the third, fourth, and seventh sections, and also the particulars of any set-off, objection, default, or conduct allowed or taken into account; such decree or award to be made in the prescribed form.

Provision in case of derivative estates in the same holding.

20. Where in the case of any holding there are several persons standing in the relation to each other of landlord and tenant, and the circumstance of any one of such tenants quitting his holding by reason of disturbance or otherwise involves the interest of any of such persons other than the tenant quitting his holding, the Court shall determine the whole amount payable under this Act on the occasion of such tenant quitting his holding, and shall direct payment of the same by such person, and to such one or more of the persons interested, and in such manner as the Court thinks just; provided that this section shall not affect the Ulster tenant-right custom or such usage as aforesaid to which any holding is proved to be subject.

Restriction on eviction of tenant.

21. A tenant who may be decided by the Court to be entitled to compensation to be paid by any landlord shall not be compelled by process of law to quit his holding until the amount of compensation due to him has been paid or deposited in manner herein-after mentioned. A landlord shall in all cases have the option of depositing in the manner prescribed the amount of compensation due; and if at any time after the making of a claim for compensation as hereinbefore directed, and before finally giving up possession of his holding, a tenant shall be alleged to have done any damage to his holding, or the buildings thereon, the Court shall inquire into the same, and allow to the landlord out of the money so deposited such compensation as it may deem just, including mesne rates. In no case shall a tenant, except by special leave of the Court, be entitled to receive the money so deposited until he shall have given up possession of his holding. Where compensation is awarded in respect of any holding to be paid by any landlord who is himself a tenant of such holding, the tenant to whom such compensation is awarded shall not by reason of such compensation not being paid or deposited in manner aforesaid by such landlord be entitled under this section, as against a superior landlord not liable to such compensation, to retain possession of the holding after the expiration or determination of the title thereto of the landlord by whom such compensation was so awarded to be paid as aforesaid.

Court to award Compensation.

Court to mean Civil Bill Court or Court of Arbitration.

22. For the purposes of this part of this Act the Court shall mean one or other of the tribunals following; that is to say,

The Civil Bill Court of the county where the matter requiring the cognizance of the Court arises; or,

The Court of Arbitration constituted as in this Act mentioned.

Where a matter requiring the cognizance of the Court arises in respect of a holding situate within the jurisdiction of more than one Civil Bill Court, any Civil Bill Court within the jurisdiction of which any part of the holding is situate may take cognizance of the matter.

Civil Bill Court.

23. The judge of the Civil Bill Court (herein-after called the chairman) shall in all cases brought before him under the provisions of this Act have power to take evidence upon oath, and to compel the attendance of witnesses, and shall have all and the same powers, jurisdiction, and authority as in cases of Civil Bill ejectment coming within his jurisdiction as such judge: Provided always, that the judge shall himself without a jury decide any question of fact arising in any case brought before him under this Act.

The chairman may, with the consent of both parties, hear and determine any case brought before him under this Act in chamber, if he so thinks fit, and when so sitting in chamber he shall have all and the same powers, jurisdiction, and authority in respect to cases so heard as if sitting in open court.

The chairman may, within the prescribed time after making any order, review or rescind or vary any order previously made by him, but, save as aforesaid, and as provided by this Act with respect to appeal, every order of the Civil Bill Court shall be final.

Any order made by the chairman under this Act may be enforced by attachment or otherwise in the same manner as if it were the order of any of the superior courts of common law at Dublin, and if such order made by the chairman be for the payment of money, it may also be enforced in the same manner as civil bill decrees for money demands made by such chairman.

Appeal from Civil Bill Court.

24. Any person aggrieved by any order of the chairman made under this Act may, within the prescribed time and in the prescribed manner, appeal therefrom in manner following; that is to say,

(1.) Where such order has been made in the county or the county of the city of Dublin, to two judges of the superior courts of common law to be from time to time selected by the Court for Land Cases reserved:

(2.) Where such order has been made elsewhere, to the judges of assize of the county in which such order has been made:

And every such appeal may be heard and determined by one of the said judges; but in case any question of law shall arise upon any such appeal, the judge before whom such question arises may, if he thinks fit, require that the same shall be heard and determined by both the said judges, and thereupon such question shall

be heard and determined by both the said judges, who shall for such purpose sit together.

The judge or judges hearing such appeal may give judgment affirming, reversing, or modifying the order appealed from, and may finally decide thereon, and make such order as to costs in the Court below and of the appeal as may be agreeable to justice; and if the judge or judges alter or modify the order, such order so altered or modified, and signed by the judge or judges, shall be of the like effect as if it were the order of the Civil Bill Court. The judge or judges may also, in cases where he or they think it expedient so to do, instead of making a final order, remit the case, with such directions as he or they may think fit, to the Court below.

The judges to whom any such appeal may be made may, where they deem it expedient, reserve any matter or question arising upon such appeal by way of case stated for the consideration of the Court for Land Cases reserved at Dublin.

The Court for Land Cases reserved at Dublin shall, for the purposes of this Act, be constituted in manner following; that is to say, the Lord Chancellor, the Master of the Rolls, the Lord Justice of Appeal, the Vice-Chancellor, and all the judges of the Common Law Courts shall be judges of the said Courts for Land Cases reserved, and any five of such judges, the Lord Chancellor or Master of the Rolls, or Lord Justice of Appeal, or the Vice-Chancellor or one of the chief judges of the Common Law Courts being one, shall have power to hear and determine any matters that shall be brought before the said Court.

The officers of the Court of Exchequer Chamber shall act as officers of the Court for Land Cases reserved.

All cases referred to the Court for Land Cases reserved shall be prosecuted, heard and determined by such Court in such manner and form and subject to such rules and regulations as the said Court may from time to time by rule direct.

The Court for Land Cases reserved shall give such judgment as ought to have been given in the Court below by the judges thereof, and such judgment shall be of the like effect as if it were the judgment of the said judges, or the Court of Land Cases reserved may remit the case, with such directions as they think fit, to the Court below.

Court of Arbitration.

25. Where the parties to any such dispute as aforesaid respecting any holding are desirous that such dispute should be settled by arbitration, they shall, in the prescribed manner and within the prescribed time, refer the same to an arbitrator or arbitrators, with an umpire to be appointed in manner appearing in the schedule annexed hereto, and the tri-

bunal so selected shall be deemed in respect of such dispute the Court of Arbitration under this Act.

The Court of Arbitration shall, in all cases brought before it under this Act, have all and the like powers, jurisdiction, and authority as a Civil Bill Court under this Act, with this exception, that the Court of Arbitration shall have no power to punish persons for contempt, or to enforce its awards; but it may report to the Civil Bill Court the name of any person refusing to give evidence, or to produce documents, or guilty of contempt of the Court when sitting judicially; and the Civil Bill Court may, upon such report, punish the offender in the same manner as if the offence had been committed in, or in respect of a matter under the cognizance of the Civil Bill Court.

The award of the Court of Arbitration may, at the instance of either party, be recorded in the prescribed manner and within the prescribed time in the Civil Bill Court, and when so recorded shall be enforceable as if the same were an order of said Court.

No such award shall, so far as relates to the dispute under this Act, be held to be invalid by reason of the violation of or non-compliance with any technical rule of law respecting awards, where such award substantially decides the dispute referred to the Court of Arbitration.

No appeal shall lie from an award of the Court of Arbitration, nor shall any such award be removeable by certiorari.

Powers of limited Owners.

26. The expression "limited owner" shall in this Act mean as follows:

Interpretation of "limited owner."

(1.) Any person entitled under any existing or future settlement at law or in equity, for his own benefit and for the term of his own life, to the possession or receipt of the rents and profits of land, whether subject or not to incumbrances, in which the estate for the time being subject to the trusts of the settlement is an estate for lives or years renewable for ever, or is an estate renewable for a term of not less than sixty years, or is an estate for a term of years of which not less than sixty are unexpired, or is a greater estate than any of the foregoing estates:

(2.) Any body corporate, any corporation sole, ecclesiastical or lay, any trustees for charities, and any commissioners or trustees for ecclesiastical, collegiate, or other public purposes, entitled at law or in equity, in the case of freehold land, to an estate in fee-simple or in fee-farm, and in the case of leasehold land to a lease for an unexpired residue

of not less than thirty-one years, or for a term of years or of lives renewable for ever, or renewable for a period of not less than thirty-one years.

Agreement by limited owner.

27. A landlord being a limited owner, shall have power to agree with a tenant as to the amount of compensation payable to him under this Act, and on payment of the same to the tenant may apply to the Civil Bill Court for an order charging the holding with an annuity in respect of such payment; and the Court, upon being satisfied of such payment having been made, shall charge the holding with an annuity of five pounds for every one hundred pounds of the sum so paid to the tenant, and so on in proportion for any less sum, such annuity to be limited in favour of the limited owner, his executors, administrators, and assigns, and to be payable for a term of thirty-five years on the anniversary of such date; provided that no such order shall be made by the Court unless notice of the application for the same shall have been given in the prescribed form to the person for the time being entitled to the first estate of inheritance, if any, expectant upon the determination of the estate of the limited owner, or if such person shall be a married woman, infant, or lunatic, to his or her husband, guardian, or committee respectively. Any annuity created under this section shall be a charge upon the holding having priority over all estates and interests subsequent to the estate or interest of the limited owner, but subject to any estates, mortgages, or other interests having priority over or charged on the estate of the limited owner.

Power of limited owner to grant leases.

28. Any limited owner shall have power to grant agricultural leases for any term of years absolute, or determinable at fixed periods, subject to the following restrictions:

(1.) The term of any lease shall not exceed thirty-five years:

(2.) The power of leasing conferred by this Act shall not include any mansion house or demesne lands:

(3.) The lease shall take effect in possession, or within one year after the execution thereof, and not in reversion, and there shall be reserved thereby a fair yearly rent to be incidental to the immediate reversion of the holding, without taking anything in the nature of a fine, premium, or foregift; and in estimating such yearly rent it shall not be necessary to take into account against the tenant the increase (if any) in the value of the holding arising from any improvements executed by him or his predecessors in title:

(4.) The lease shall imply a condition of re-entry for non-payment of the rent thereby reserved:

(5.) The lease, if it includes any building, shall contain a clause declaring whether the landlord or the tenant is bound to rebuild such building in the case of the same being destroyed during any part of the tenancy by fire, lightning, or tempest, and whether the landlord or the tenant is bound to keep the same in repair:

(6.) The lessee shall execute a counterpart of every lease, and shall thereby covenant for the due payment of the rent reserved:

Upon the application of any landlord or tenant the Civil Bill Court may confirm any lease granted or proposed to be granted under this Act, and such Court may, if it thinks just, confirm or refuse to confirm such lease with or without modifications, and the confirmation of any such lease shall be deemed conclusive evidence of the lease being within the powers of this Act; the confirmation of a lease shall be certified in the prescribed manner.

Effect of lease by limited owner.

29. Any lease granted in pursuance of this Act by an individual limited owner shall be valid against the person granting the same, and against all persons entitled to any estate or interest, subsequent to the estate or interest of such limited owner; and any lease granted in pursuance of this Act by any limited owner, being a body corporate, corporation sole, trustees for charities, commissioners or trustees for ecclesiastical, collegiate, or other public purposes, shall bind all the estate and interest of such last-mentioned limited owner; but no lease granted by an owner holding himself under a lease shall continue after the expiration of the term granted by such owner's lease.

Leasing powers of Act to be cumulative.

30. All powers of leasing given by this Act shall be deemed to be in addition to any other powers any limited owner may possess, and such owner may exercise any other power of leasing vested in him in the same manner as if this Act were not passed.

Rules for carrying first part of Act into effect.

31. The Court for Land Cases reserved, or any five of the judges of the said Court (the Lord Chancellor or Master of the Rolls, Lord Justice of Appeal or Vice-Chancellor, or one of the chief judges of the Common Law Courts being one), may from time to time make, and when made may rescind, annul, or add to, rules with respect to the following matters:—

(1.) The proceedings in the Civil Bill Court and Court of Arbitration under this part of this Act:

(2.) The proceedings in appeals under this part of this Act:

(3.) The proceedings in Land Cases reserved under this part of this Act:

(4.) The circulation of forms and directions as to the mode in which this part of this Act is to be carried into execution:

(5.) The scale of costs and fees to charged in carrying this part of this Act into execution, and the taxation of such costs and fees, and the persons by or from whom and the manner in which such costs and charges are to be paid or deducted, subject nevertheless to the sanction of the Treasury as to the amount of fees to be charged:

(6.) The service of notices on incumbrancers and other persons interested, and any other matter by this part of this Act directed to be prescribed:

(7.) As to any other matter or thing, whether similar or not to those above mentioned, in respect of which it may be expedient to make rules for the purpose of carrying this part of this Act into effect.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

PART II.

Sale of Land to Tenants.

Application to "the Court" for sale to tenant of holding.

32. Subject to the restrictions herein-after mentioned, the landlord and tenant of any holding in Ireland may agree for the sale of the holding to the tenant at such price as may be fixed between them; and upon such agreement being made they may jointly, or either of them may separately with the assent of the other, apply to the Landed Estates Court, in this part of this Act referred to as "the Court," for the sale to the tenant of his holding.

Restrictions on sale of holding.

33. No sale shall be made under this part of this Act unless the landlord is the absolute owner of the land which forms the holding of the tenant, or such tenant for life or other limited owner as is in this section mentioned.

"Absolute owner" shall in the case of freehold land mean the owner in fee simple or in fee farm, or person capable of appointing or disposing of the fee, whether subject or not to incumbrances, and in the case of leasehold land mean the owner or person ca-

pable of disposing of the whole interest in the lease under which the land is held, whether subject or not to incumbrances.

No holding of leasehold tenure shall be sold under this part of this Act unless the lease under which the landlord is possessed of the land which forms the holding is a lease for lives or years renewable for ever, or a lease for a term of years of which not less than sixty are unexpired at the time of the sale being made; and no sale shall be made under this part of this Act by a landlord being the owner of a leasehold under a lease containing a prohibition against alienation unless such prohibition has determined or is waived.

"Tenant for life" shall, for the purposes of this part of this Act, mean any person entitled under any existing or future settlement at law or in equity for his own benefit and for the term of his own life to the possession or receipt of the rents and profit of land, whether subject or not to incumbrances in which the estate for the time being, subject to the trusts of the settlement, is an estate in fee simple or fee farm, or a lease of such duration as is in this section mentioned.

"Other limited owner" shall mean any body corporate, any trustees for charities, and any commissioners or trustees for collegiate or other public purposes, having an estate in fee simple or fee farm, or possessed of such leasehold as is in this section mentioned, whether subject or not to incumbrances.

As to the sale of holding by the Court.

34. The application shall be accompanied by a deposit of such sum (if any), to be deposited by the landlord by way of security for costs, as the Court may require. Upon the foregoing conditions being complied with, the Court shall make such inquiries as to the circumstances of the holding in respect of which the application is made, and as to the parties interested therein, either as incumbrancers, owners, or otherwise, and as to the sufficiency of the price and of the capacity of the landlord to sell the same, as the Court may think fit, and if the Court approve of the application it shall carry such sale into effect accordingly, and execute the necessary conveyance to the tenant.

Estate of purchaser to be free from incumbrances.

35. The conveyance by the Court under this part of this Act of a holding to a tenant shall in the case of freehold land confer on the tenant an estate in fee simple or fee farm, as the case may be, in such holding, together with all rights, privileges, and appurtenances enjoyed or reputed as belonging or appertaining thereto, subject to such charges and interests, if any, as are in this part of this Act declared not to be incumbrances, and in the case of estates in fee farm to the rents, covenants, and conditions expressed

in the grant relating to the land of which the holding forms the whole or part, and on the part of the grantee, his heirs, executors, administrators, and assigns, to be paid, observed, and performed, but free from all other estates, incumbrances, and interests whatever, and shall in the case of leasehold land vest the holding in the tenant for the period, and subject to the rents, covenants, and conditions, expressed in the lease relating to the land of which the holding forms the whole or part, and on the part of the lessee, his executors, administrators, and assigns to be paid, observed, and performed, subject to such charges and interests, if any, as are in this part of this Act declared not to be incumbrances, but free from all other incumbrances and estates whatsoever.

Certain charges not incumbrances.

36. The following charges and interests shall not be deemed incumbrances within the meaning of this part of this Act; that is to say,

(1.) Quitrents and rentcharges in lieu of tithes:

(2.) Rights of common, rights of way, watercourses, and rights of water and other easements:

(3.) Heriots, manorial rights of all descriptions, and franchises;

(4.) Charges for drainage, or other charges created under Act of Parliament, and to be specified in the conveyance.

And every holding sold under this part of this Act shall, unless the contrary is expressed, be deemed to be subject to such of the above charges and interests as may be for the time being subsisting thereon.

As to the distribution of purchase money.

37. The Court shall determine the rights and priorities of the several persons entitled to or having charges upon or otherwise interested in any holding sold in pursuance of this Act, and shall distribute the purchase money in accordance with such rights and priorities.

Where any moneys arising from a sale under this part of this Act are not immediately distributable, or the parties entitled thereto cannot be ascertained, or where from any other cause the Court thinks it expedient for the protection of the rights of the parties interested, the Court may order the moneys to be lodged in Court or in the prescribed bank to the prescribed account, and may by its order declare the trusts affecting such moneys, so far as the Court has ascertained the same, or state the facts or matters found by it in relation to the rights and interests in such moneys; and the Court may from time to time make such orders in respect to any such moneys, and the investment or application thereof, or the payment thereof to the parties interested, as the circumstances of the case may require.

38. There shall be charged, in respect of any sale made in pur-

Costs of sale.

suance of this part of this Act, such per-centage fee on the price paid as the Treasury may prescribe, and the fees so charged shall be paid in to the receipt of Her Majesty's Exchequer, and carried to the account of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

Cost of distribution of purchase money.

39. Where any purchase moneys have been so lodged in Court or in the prescribed bank, provision shall be made in the prescribed manner with the sanction of the Treasury for the payment without cost to the persons entitled to any estate or interest in or having charges upon the holding so sold of any principal or interest moneys to which such persons may be entitled in respect of such estate and interest: Provided that any provision so made shall not extend to any expense caused by disputed titles, or any expense incurred by the failure of any person to comply with the rules for the time being in force relating to the distribution of such purchase moneys.

General powers of Court in conduct of sale of land.

40. The Court shall have full power to apportion charges, rents, and covenants, and decide all questions whatsoever, which it may be necessary to decide for the purposes of this Act, and shall not be subject to be restrained in the due execution of their powers under this Act by the order of any Court.

Rules for carrying second part of this Act into effect.

41. The Privy Council in Ireland may from time to time make, and when made may rescind, annul, or add to, rules with respect to the following matters:

(1.) The proceedings to be had under this part of this Act:

(2.) The circulation of forms and directions as to the mode in which this part of this Act is to be carried into execution:

(3.) The scale of costs and fees to be charged in carrying this part of this Act into execution, and the taxation of such costs, and the persons by whom such costs and fees are to be paid, subject nevertheless to the sanction of the Treasury as to the amount of fees to be charged:

(4.) The giving of notices to incumbrancers and other persons interested, and the service of such notices and any other matter by this part of this Act directed to be prescribed:

(5.) As to any other matter or thing, whether similar or not to those above mentioned, in respect of which it may be expedient to make rules for the purpose of carrying this part of this Act into execution:

In framing rules under this section the Privy Council sha[1]

provide that notice of any sale to be made under this part of this Act shall be served upon every registered incumbrancer by sending it through the post in a prepaid letter addressed to such incumbrancer, and in proving service of any such notice it shall be sufficient to prove that such notice was properly directed to the incumbrancer at his last known place of abode, and that it was put as a prepaid letter into the post office.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

PART III.

Advances by and Powers of Board.

Advances to landlords for compensation for improvements.

42. Where any sums are due in respect of compensation under this Act from a landlord to a tenant who is quitting his holding, but has not been disturbed by his landlord, the Commissioners of Public Works in Ireland, in this Act referred to as the Board, may, upon the application of such landlord, advance to the tenant on behalf of the landlord the whole or such portion of the sum so due as they may think expedient, and upon an order being made to that effect by the Civil Bill Court, and upon such advance being made by the Board, such holding shall be deemed to be charged with an annuity of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be payable within a term of thirty-five years.

Advances to landlords for improvement of waste lands.

43. The Board may from time to time upon such security as they may approve advance such sums as they may think fit to any landlord in Ireland for the purpose of enabling him to reclaim waste lands; and where any landlord has contracted for the sale of any waste land the Board may advance upon security jointly given by the vendor and purchaser such sums as they may think fit, not exceeding a moiety of the purchase money contracted to be paid; and such waste land, and any other lands included in any such security, shall upon an order being made to that effect by the Civil Bill Court, and upon such advance being made by the

Board, be deemed to be charged with an annuity of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be repayable within a period of thirty-five years.

Advances to tenants for purchase of holdings.

44. The Board, if they are satisfied with the security, may advance to any tenant for the purpose of purchasing his holding in pursuance of this Act any sum not exceeding two thirds of the price of such holding, and upon an order being made by the Civil Bill Court to that effect, and upon such advance being made by the Board, such holding shall be deemed to be charged with an annuity of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be repayable in the term of thirty-five years.

No purchaser, or person deriving title through him, of any holding to whom any advance has been made under this section shall, without the consent of the Board, alienate, assign, subdivide, or sublet his holding during such time as any part of the annuity charged on such holding remains unpaid, and any part of such holding alienated, assigned, subdivided, or sublet in contravention of this section shall be forfeited to the Board, to be held by them for public purposes.

Advances to tenants for purchases of holdings in Landed Estates Court.

45. Where an absolute order for the sale of any estate has been made by the Landed Estates Court, and the tenant of any holding forming part of such estate is desirous to purchase such holding, he may apply to the Board in the prescribed manner to advance any sum not exceeding two thirds of the amount he may pay for the purchase of the same, and the Board may, subject to such conditions as to the price to be paid for such holding, and to any matter relating to such purchase, as they think fit, agree with such tenant to make such advance.

When any such tenant has been declared the purchaser of a holding, and has paid one third or any greater part of the purchase money, the Board may pay the balance of such purchase money instead of such tenant, and upon such payment being made by the Board the Landed Estates Court shall by order declare such holding to be charged with an annuity of five pounds for every hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be repayable in the term of thirty-five years.

Any holding charged by order of the Landed Estates Court in manner aforesaid shall not, without the consent of the Board, be

alienated, assigned, subdivided, or sublet during such time as any part of the annuity charged on such holding remains unpaid, and any part of such holding alienated, assigned, subdivided, or sublet in contravention of this section shall be forfeited to the Board, to be held by them for public purposes.

Landed Estates Court to afford facilities for purchases by occupying tenants.

46. The Landed Estates Court shall on the sale of estates by said Court, so far as is consistent with the interests of the persons interested in the estates or the purchase money thereof, afford, by the formation of lots for sale or otherwise, all reasonable facilities to occupying tenants desirous of purchasing their holdings under the provisions of this Act, and for that purpose shall hear any application in that behalf made by the Board or any such occupying tenant.

Advances to facilitate purchases of entire estates.

47. Where the landlord of an estate is willing to contract for the sale under the second part of this Act of his estate in its entirety but not in part, and the tenants of the holding comprising four fifths in value of such estate are willing to purchase their holdings, and other purchasers can be found to buy the residue of such estate, and to pay one half of the purchase money payable in respect of such residue, such sale may be made accordingly under the second part of this Act in the same manner as if the whole of the purchasers of the estate were tenants of the landlord, and the Board may advance to such other purchasers one half of their purchase money upon the security of the residue of the estate, and such advance may, at the discretion of the Board, be made to such purchasers collectively on the security of the whole of the residue of such estate, or to such purchasers severally on the security of the portions bought by them respectively, or partly in one way and partly in the other. Where any advance is made to purchasers or a purchaser under this section, the land bought by such purchaser or purchasers shall, on an order made to that effect by the Civil Bill Court, be charged with an annuity of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be repayable within the term of thirty-five years.

Advances charged on estate by way of annuity.

48. Every annuity created in favour of the Board in pursuance of this Act shall be a charge on the land subject thereto having priority over all existing and future estates, interests, and incumbrances, with the exception of quitrents and other charges incident to the tenure, to rentcharges in lieu of tithes, and any charges created under any Act authorizing advance of public money, or under any Act

creating charges in respect of improvements on lands, and passed before this Act, with the exception also (in cases where the lands are subject to a fee-farm rent, or held under a lease reserving rent) of such fee-farm rent or rent reserved as aforesaid. The term during which every such annuity shall be payable shall be computed from the date of the advance in respect of which the same shall be charged, and every such annuity shall be payable in equal half-yearly payments on every first day of May and every first day of November during the said term of thirty-five years, with such apportionment, if any, as may be necessary in respect of the first and last of such payments.

Recovery of annuity.

49. Every annuity created in pursuance of this Act shall be recoverable by the Board or by or in the name of the Attorney-General for Ireland in manner in which rent charges in lieu of tithes are recoverable in Ireland; a certificate purporting to be under the hand of a member for the time being of the Board shall be evidence that the amount of any annuity or arrears of annuity stated therein to be due under this Act from any person named therein is due to the Board from such person.

Arrears of annuity.

50. No arrears of any annuity charged on land in pursuance of this Act shall be recoverable after the expiration of two years from the date at which the sum in arrear became due; and as between owners having successive interests in any land so charged it shall be the duty of the owner for the time being in possession or in receipt of the rents and profits of such land to prevent such arrears arising, and if he make default in doing so, and the owner next entitled in possession pay any arrears caused by such default, the amount so paid shall be a debt due to the owner who has paid the same from the owner by whose default it became necessary to make such payment.

Power of owner to redeem annuity.

51. Where any land is charged with an annuity in favour of the Board, it shall be lawful for any person liable to pay such annuity to redeem the said annuity, or so much thereof as may at any time remain unexpired, by payment to the Board of a sum of money equivalent to the then value of the said annuity, such value to be calculated according to the table in the schedule annexed hereto.

Power of Board to commute and compromise.

52. Where any person is entitled to receive any principal moneys in pursuance of the sale of any holding made by them in pursuance of this Act, the Board may, on the application of such person, commute such principal moneys for the payment of an annuity of equivalent value, the value of money being reckoned at three pounds ten shillings per cent. per annum; and where any such person

as aforesaid is entitled to the payment of a sum annually, the Board may commute the same for the payment of a principal sum of equivalent value, the value of money being reckoned at three pounds ten shillings per cent. per annum.

The Board may also, with the assent of the claimant, compromise by the payment of any principal or annual sum any postponed contingent or doubtful or other claim of any person to any share or interest in the purchase money arising from the sale of any holding under this Act.

Control of Board by Treasury, &c.

53. The Board shall in making advances, in the mode of investing and dealing with the funds that come into their possession, and in the mode of accounting for the same, and generally in the performance of their duties under this Act, conform to any directions, whether given on special occasions or by general rule or other. wise, which may from time to time be given to them by the Treasury, and shall report within such time and in such manner as the Treasury may direct to the Treasury all matters which may be transacted by the Board.

As to issues to moneys to the Board by Treasury.

54. There shall be issued to the Board for the purposes of this Act, at such times and in such sums and in such manner as the Treasury may determine, any sums of money not exceeding in the whole one million pounds, and the Treasury may from time to time issue to the said Board the said sum of one million pounds out of the Consolidated Fund or the growing produce thereof.

Repayment of Consolidated Fund of moneys advanced.

55. All repayments to the Board of principal sums or by way of annuities in respect of advances made by them shall from time to time be paid back to the Consolidated Fund in such manner as the Treasury may direct.

Duty of Civil Bill Court as to charging orders.

56. The Civil Bill Court shall, on the application of any person entitled to an annuity by this Act directed to be charged by order of the Civil Court, make an order charging the same accordingly, and the clerk of the peace of the county in which such Court has jurisdiction shall keep an alphabetical registry in his office of all charging orders so made by the Court, and shall allow any person to inspect the same at all reasonable times on the payment of one shilling.

For the purpose of making charging orders in respect of any holding the Civil Bill Court of the county in which such holding or any part thereof is situate shall be deemed to have jurisdiction over such holding.

PART IV.

SUPPLEMENTAL PROVISIONS.

As to Legal Proceedings and Court.

Stamp duty on notice to quit.

57. There shall be paid in respect of every notice to quit to be served on a tenant of a holding as defined under this Act a duty of two shillings and sixpence, and such payment shall be denoted by a stamp on the notice.

Regulations as to notice to quit.

58. No notice to quit shall be valid unless it is printed or written, or partly in print and partly in writing, and signed by the landlord or his agent lawfully authorized thereunto, nor unless such notice at the time of the service thereof is duly stamped with a stamp denoting the payment of a duty of two shillings and sixpence. A notice to quit shall not in the case of a tenant from year to year take effect until after the expiration of a period of not less than six calendar months from the date of the service of the notice, such period of six calendar months, in the absence of agreement to the contrary, to terminate on the last gale day of the calendar year. Any person serving on a tenant a notice to quit that is not in conformity with this section shall incur a penalty not exceeding forty shillings, to be recovered summarily under the provisions of the Petty Sessions (Ireland) Act, 1851.

In any proceedings between landlord and tenant, where the due service of a notice to quit has been proved, such notice to quit shall, until the contrary is proved, be deemed to have been duly stamped.

Administration on death of tenant.

59. The Civil Bill Court in any county on being satisfied that a tenant in such county has died, and that there is no legal personal representative of such tenant or no legal personal representative whose services are available for the purposes of this Act, may, if a legal representation of the tenant is required for the purposes of this Act, by order appoint such person as it thinks best entitled to be administrator of the deceased tenant limited to the purposes of this Act, and any such limited administrator shall for all the purposes of this Act represent the deceased tenant in the same manner as if the tenant had died intestate, and administration had been duly granted to such limited administrator of all the personal estate and effects of the tenant.

Provision as to married women.

60. A married woman entitled to her separate use, and not restrained from anticipation, shall for the purposes of this Act be deemed a feme sole, but where any other married woman is desirous of making any application, giving any consent, or doing any act, or becoming

party to any proceeding under this Act, in relation to any holding, her husband's concurrence shall be required, and she shall be examined by the Civil Bill Court of the county where she may for the time being be, or of the county where the holding is situate, apart from her husband touching her knowledge of the nature and effect of the application or other act, and it shall be ascertained that she is acting freely and voluntarily.

Provision as to other persons under disability.

61. Where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding in relation to any holding under this Act, is a minor, idiot, or lunatic, the guardian or committee of the estate respectively of such person may make such applications, give such consents, do such acts, and be party to such proceedings, as such person respectively, if free from disability, might have made, given, done, or been party to, and shall otherwise represent such person for the purposes of this Act; where there is no guardian or committee of the estate of any such person as aforesaid, being infant, idiot, or lunatic, or where any person the committee of whose estate if he were idiot or lunatic would be authorized to act for and represent such person under this part of this Act is of unsound mind or incapable of managing his affairs, but has not been found idiot or lunatic under an inquisition, it shall be lawful for the Civil Bill Court of the county in which the holding is situate to appoint a guardian of such person for the purpose of any proceedings under this part of this Act, and from time to time to change such guardian; and where such Civil Bill Court sees fit it may appoint a person to act as the next friend of a married woman for the purpose of any proceeding under this Act, and from time to time to remove or change such next friend.

Additional sittings of Civil Bill Court.

62. For the purposes of carrying into effect the provisions of this Act the judges of Civil Bill Courts in Ireland shall, in addition to the Civil Bill Courts now by law directed, hold such Courts in such places within their respective jurisdictions as may be prescribed by the Privy Council in Ireland.

Additional salaries to judges and officers of Civil Bill Courts.

63. There shall be paid to the judges and officers of the Civil Bill Courts and to the officers of the Court of Exchequer Chamber in Ireland, by way of remuneration, for the additional duties by this Act imposed upon them, such annual sums by way of additional salaries respectively as the Lord Lieutenant may direct and the Commissioners of Her Majesty's Treasury may approve, and all such sums shall be paid by the said Commissioners out of moneys to be provided by Parliament for that purpose.

Power to appoint a substitute in Civil Bill Court if judge cannot attend.

64. In case it shall appear to the Lord Chancellor that from any reasonable cause the judge of any Civil Bill Court cannot conveniently hold the Courts prescribed under this Act, he may appoint any other judge of a Civil Bill Court to hold such Courts in his stead, and thereupon the judge so appointed shall hold such Courts as aforesaid, and shall for the purposes thereof have all and every the powers, authority, and jurisdiction of the judge in whose stead he shall have been appointed, and so long as he shall continue to act in his stead there shall be paid to him instead of to the said judge, the additional salary payable to the said judge under this Act.

PART V.

Miscellaneous.

Mode of payment of grand jury cess in certain cases.

65. Any person who, under any tenancy whatsoever created after the passing of this Act, becomes the occupier of any premises liable to grand jury cess, and who is liable to pay a rent in respect of the same, may deduct from such rent, for each pound of the rent of which he is liable to pay, one half of the sum which he has paid as grand jury cess in respect of each pound of the net annual value of such premises as valued under the Acts relating to the valuation of rateable property in Ireland, and so in proportion for any less sum than a pound: Provided always, that it shall not be lawful for any such person to deduct from the rent payable by him for such premises a larger sum than one half of the amount of the cess that has been paid by him in respect of the same.

Any person receiving rent in respect of any premises liable to grand jury cess, who also pays a rent in respect of the same, shall, if such rent is received and paid under contracts entered into after the passing of this Act, be entitled to deduct from the rent so paid by him a sum bearing such a proportion to the amount of the cess deducted from the rent received by him as the rent paid by him bears to the rent received by him.

Where value of premises does not exceed 4*l.* immediate lessor to pay grand jury cess.

66. Whenever the net annual value of the whole of the premises situate in any county of a city, county of a town, or barony, occupied by any person under any tenancy whatsoever created after the passing of this Act, does not exceed four pounds, as valued under the Acts relating to the valuation of rateable property in Ireland, and the same are liable to grand jury cess, then such cess shall, after the passing of this Act, be paid

and payable by the immediate lessor or lessors of such person, and may be recovered from such immediate lessor or lessors in like manner as but for the provisions of this section it might have been recovered from the person occupying such premises.

If any such cess payable by any such immediate lessor be not paid within four months after the same has become due, the person duly authorized to collect the same may give notice in writing to the occupier for the time being of such premises to pay the cess due in respect of such premises, and after the expiration of one calendar month from the time of giving such notice it shall be lawful to recover such cess from such occupier, or in his default from any subsequent occupier of the premises, in like manner as if the same were cess due in respect of premises of a net annual value greater than four pounds.

And every such occupier so paying such cess may deduct from the rent he may be then or next thereafter liable to pay in respect of any such premises the whole of any such cess that he may have paid in respect of the same premises, and if rent sufficient to cover such cess be not then or do not thereafter become due from such occupier, he shall be entitled to recover the same from such immediate lessor by Civil Bill.

Exception as to county cess levied in certain cases.

67. Nothing in the two next preceding sections of this Act contained shall apply to any county cess levied under the authority of any presentment made for the compensation of any person for any loss or damage occasioned by any malicious injury, or of any presentment made under the authority of section one hundred and six of the Act passed in the session of Parliament held in the sixth and seventh years of the reign of His late Majesty King William the Fourth, chapter one hundred and sixteen, or under the authority of "The Peace Preservation (Ireland) Act, 1870," or to any moneys levied as county cess by the direction of the Lord Lieutenant of any district under the authority of "The Peace Preservation (Ireland) Act, 1856," or any Act or Acts amending or continuing the same now in force.

Non-liability for rent for land covered by public roads.

68. Any person who, after the passing of this Act, shall take at an acreable rent land adjoining or intersected by any public road or public roads, shall not, in absence of an agreement to the contrary, be liable to rent for any portion of such land as may be contained in the public road or roads.

Tenancies at will.

69. Where any tenancy at will, or less than a tenancy from year to year, is created by a landlord after the passing of this Act, the tenant under such tenancy shall on quitting his holding be entitled to notice to quit and

compensation in the same manner in all respects as if he had been a tenant from year to year: Provided that this section shall not apply to any letting or contract for the letting of land made and entered into bona fide for the temporary convenience or to meet a temporary necessity either of the landlord or tenant.

Definitions.

General definitions.

70. In the construction of this Act the following words and expressions shall have the force and meaning hereby assigned to them, unless there be something in the subject or context repugnant thereto:

The term "person" or "party" shall extend to and include any body politic, corporate, or collegiate, whether aggregate or sole, and any public company:

The term "county" shall extend to and include county of a city, and county of a town, and a riding of a county, where such county of a city, county of a town, or riding of a county is appointed for civil bill purposes:

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act:

The term "lease" shall include an agreement for a lease:

The term "settlement" as used in this Act shall include any Act of Parliament, will, deed, or other assurance or connected set of assurances whereby particular estates or particular interests in land are created, with remainders or interests expectant thereon: and every estate and interest created by appointment made in exercise of any power contained in any settlement or derived from any settlement shall be considered as having been created by the same settlement; and an estate or interest by way of resulting use or trust to or for the settlor, or his heirs, executors, or administrators, shall be deemed to be an estate or interest under the same settlement:

The term "landlord" in relation to a holding shall include a superior mesne or immediate landlord, or any person for the time being entitled to receive the rents and profits or to take possession of any holding:

The term "tenant" in relation to a holding shall mean any tenant from year to year and any tenant for a life or lives or for a term of years under a lease or contract for a lease, whether the interest of such tenant has been acquired by original contract, lawful assignment, devise, bequest, or act and operation of law; and where the tenancy of any person having been a tenant under a tenancy which does not disentitle him to compensation under this Act is determined o

expiring, he shall, notwithstanding such determination or expiration, be deemed to be a tenant until the compensation, if any, due to him under this Act has been paid or deposited as in this Act provided:

The term "improvements" shall mean in relation to a holding,—

(1.) Any work which being executed adds to the letting value of the holding on which it is executed, and is suitable to such holding; also,

(2.) Tillages, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding.

Agricultural or pastoral holdings only subject to this Act.

71. This Act shall not apply to any holding which is not agricultural or pastoral in its character, or partly agricultural and partly pastoral; and the term "holding" shall include all land of the above character held by the same tenant of the same landlord for the same term and under the same contract of tenancy.

Short title.

72. This Act may be cited for all purposes as "The Landlord and Tenant (Ireland) Act, 1870."

Application of Act.

73. This Act shall apply to Ireland only.

SCHEDULE.

Arbitrations.

(1.) If both parties concur a single arbitrator may be appointed.

(2.) If the single arbitrator dies or becomes incapable to act before he has made his award, the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if no appointment of an arbitrator had taken place.

(3.) If both parties do not concur in the appointment of a single arbitrator, each party on the request of the other party shall appoint an arbitrator.

(4.) An arbitrator shall in all cases be appointed in writing, and the delivery of an appointment to an arbitrator shall be deemed a submission to arbitration on the part of the party by whom the same is made, and after any such appointment has been made neither party shall have power to revoke the same without the consent of the other.

(5.) If for the space of fourteen days after the service by one party on the other of a request made in writing to appoint an arbitrator such last-mentioned party fails to appoint an arbitra-

tor, then upon such failure the party making the request may apply to the Court, and thereupon the dispute shall be decided by the Court according to the provisions of this Act.

(6.) If any arbitrator appointed by either party dies or becomes incapable to act before an award has been made, the party by whom such arbitrator was appointed may appoint some other person to act in his place, and if for the space of fourteen days after notice in writing from the other party for that purpose he fails to do so the remaining or other arbitrator may proceed ex parte.

(7.) If, where more than one arbitrator has been appointed either of the arbitrators refuses or for fourteen days neglects to act, the other arbitrator may proceed ex parte, and the decision of such arbitrator shall be as effectual as if he had been a single arbitrator appointed by both parties.

(8.) If, where more than one arbitrator has been appointed, and where neither of them refuses or neglects to act as aforesaid, such arbitrators fail to make their award within twenty-one days after the day on which the last of such arbitrators was appointed, or within such extended time (if any) as may have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as hereafter mentioned.

(9.) Where more than one arbitrator has been appointed, the arbitrators shall, before they enter upon the matters referred to them, appoint by writing under their hands an umpire to decide on any matters on which they may differ.

(10.) If the umpire dies or becomes incapable to act before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the arbitrators shall forthwith after such death, incapacity, or refusal, appoint another umpire in his place.

(11.) If in any of the cases aforesaid the said arbitrators refuse, or for fourteen days after request of either party to such arbitration neglect, to appoint an umpire, the Civil Bill Court, as defined by this Act, shall on the application of either party to such arbitration, appoint an umpire.

(12.) The decision of every umpire on the matters referred to him shall be final.

Table for Redemption of Annuities or Rentcharges.

Term unexpired.	Redemption money to be paid in respect of each 10*l.* of annuity.*			Term unexpired.	Redemption money to be paid in respect of each 10*l.* of annuity.		
	£	s.	d.		£	s.	d.
1	9	14	10	19	137	18	8
2	19	3	1	20	142	19	5
3	28	4	11	21	147	16	9
4	37	0	6	22	152	10	10
5	45	10	1	23	157	1	8
6	53	13	11	24	161	9	5
7	61	12	2	25	165	14	1
8	69	5	1	26	169	16	0
9	76	12	8	27	173	15	0
10	83	15	3	28	177	11	5
11	90	13	0	29	181	5	2
12	97	6	1	30	184	16	5
13	103	14	7	31	188	5	3
14	109	18	8	32	191	11	8
15	115	18	7	33	194	15	11
16	121	14	5	34	197	17	11
17	127	6	3	35	200	17	10
18	132	14	3				

Note.—This table is calculated on the assumption of the original purchase money being repaid in 35 years with interest at 3½ per cent. payable half-yearly.

* Where the unexpired term includes part of a year, such addition, if any, as may be necessary shall be made to the redemption money in respect of such part of a year.

INDEX TO THE ACT.

Court for Land Cases Reserved.

RULES FOR PROCEEDINGS

UNDER PART I.

OF THE

LANDLORD AND TENANT (IRELAND) ACT, 1870.

33 & 34 VICTORIA, CHAP. 46.

CONTENTS.

It is this day (29*th October*, 1870), *ordered by the Court for Land Cases Reserved, that the following shall be the Rules for proceedings under Part* 1 *of the Landlord and Tenant (Ireland) Act*, 1870:—

PROCEEDINGS IN RESPECT OF CLAIMS.

1. All applications and disputes under the Landlord and Tenant (Ireland) Act, 1870, shall be heard in the Division of the County where the land or some part thereof is situated, unless the Chairman shall otherwise direct on being satisfied that the same can be more conveniently tried in any other division. But the Chairman may, at his discretion, hear any interlocutory motion arising in the course of any such proceeding in any division of his county.

2. At each of the ordinary Sessions now held in each year there shall be for each Division of the County, and in one Town in such Division, a separate part of such Sessions for the disposal of business under this Act, to be termed the Land Session, of the commencement of which notice shall be given at the time and in the manner now by law directed with respect to the holding such ordinary Sessions; but for the year 1871 such notice may be given on or before the 1st of January, 1871.

3. Notices of Claim under the 16th Section of said Act shall be in the Form No. 1, 2, 3, or 4 [*as the case may be*] in the Appendix to these Rules, or as near thereto as circumstances will admit.

4. The limits of time within which Notices of Claim may be served shall be as follows:—

Every tenant who may claim to be entitled to compensation under the Act may serve notice of his claim (if any);—

a. As soon as he shall have been served by his Landlord with Notice to Quit, or with an Ejectment, or disturbed by any act of the Landlord within the meaning of the said Statute;—

b. In case of a tenancy for an uncertain term, as soon as the term shall have expired;—

c. In case of a tenancy for a term certain, when the term shall be within six months of its expiration;—

d. In case of a Tenant who shall give Notice of Surrender, with such Notice, or after its service:—

e. In every case the Notice of Claim (if any) shall be served before the Tenant quits or is deprived of possession by his Landlord, or at latest within one calendar month thereafter, subject however to the provision contained in the next Rule, and to the discretionary power hereinafter given to the Chairman.

5. Notices of Claim may be served up to the 1st day of January, 1871, though the time limited by these Rules for service thereof might otherwise have expired.

6. A copy of every Notice of Claim and of every Notice of Dispute shall, within one week after its service, or within such other time as the Chairman shall direct, be delivered to the Clerk of the Peace who shall duly record the same, with the date of the Delivery thereof to him, in a book to be kept for such purpose.

SERVICE OF NOTICES OF CLAIM.

7. The service of Notices of Claims on any Landlord, or, in his absence, on his known Agent, shall be effected in such manner (except as to the time of service), as now by Law prescribed for ordinary Civil Bill processes, but may be effected by others than the Process Servers of the Court, where the service is to be made without the county.

8. Where a Landlord is resident out of the County, the Chairman may, on application to him for such purpose, direct service of the Notice of Claim or of any other proceeding under this part of the Act to be effected within such time, and in such manner, whether by registered letter or otherwise, as he may think fit; or may declare that any service already effected shall be good service of the same.

9. All notices of Claim shall be served one calendar month, at the least, before the first day of the Land Session at which the Claim thereunder shall be entered for Hearing.

SERVICE OF NOTICES OF DISPUTE.

10. The Notices of Dispute by the Landlord shall be in the Form 5 or 6 in the Appendix to these Rules, or as near thereto as circumstances will admit, and the same, together with a copy of any Set-off or Claim relied on by him, shall be served within twenty-one days from the service on him of the Notice of Claim (subject to the discretionary power hereinafter given to the Chairman), and shall be served in the manner now by Law prescribed for the service of ordinary Civil Bills; but the Court may, in its discretion, upon facts duly verified, allow substituted service thereof, or direct any other mode of service.

ENTRY IN COURT OF NOTICES OF CLAIM AND DISPUTE.

11. Every Notice of Claim or of Dispute shall contain, if issued by an Attorney, his name and place of business, or if not issued

by an attorney, shall contain the name and residence of the Claimant or person issuing the same; and service of the Notice of Dispute, and of all subsequent proceedings in the course of such Dispute, may be effected by service thereof at such place of business or residence, as the case may be; and if the Tenant's claim be consequent upon the service of an Ejectment, the Notice of Claim may be served either as hereinbefore prescribed by these Rules, or at the residence of the Attorney for the Plaintiff mentioned in such Ejectment.

12. If either Tenant or Landlord shall have failed to serve, or to lodge, a Notice of Claim or of Dispute, or any other notice in the course of the dispute, within the times or in the manner herein limited, the Chairman may, on the application of such party, if he shall think sufficient excuse exists, and upon such terms as to costs, or otherwise, as he shall think fit, declare such service as may have been effected to be sufficient service, or enlarge the time for such service or lodgment, and if he think fit adjourn the Hearing.

13. Where a notice of Claim shall have been served, the Tenant shall, after the service of the Notice of Dispute, or in case of no Notice of Dispute being served, then, after the expiration of the time for serving notice of the same, lodge such Notice of Claim in due course, for Hearing, with the Clerk of the Peace, at the next ensuing Land Session, giving one week's notice to the opposite party; or if the next Land Session shall take place before the expiration of one calendar month from the original service of such Notice of Claim, then at the second next ensuing Land Session; and in the event of the Tenant failing to lodge his Claim for Hearing in such manner, he shall not be at liberty thereafter to do so, unless the Chairman shall, by reason of special circumstances, and on such terms as he may think fit, otherwise direct.

14. Where a Dispute shall have arisen, the parties may, at any time before such Dispute shall have been decided by the Chairman, by an agreement in writing signed by them respectively, or by their agents duly authorised, settle such dispute; and thereupon the said parties shall cause a copy of such agreement, also duly signed by them, or by their said agents, to be delivered to the Clerk of the Peace, who shall duly record the same.

15. The Claimant may, at any time before setting down his Claim for Hearing, by notice in writing delivered to the Clerk of the Peace, require his Claim to be dismissed as against all or any of the Respondents, with costs, and the Court may pronounce a dismiss accordingly, and such notice shall operate as a relinquishment of his Claim, and the Clerk of the Peace shall forthwith file such notice, and enter the same in the Record of Notice and Dis-

pute Book hereinafter mentioned, and, at the expense of the Claimant, forward a copy thereof to each of the Respondents.

REGISTRATION OF IMPROVEMENTS.

16. The notice of intention by a Landlord or Tenant to register improvements under the sixth section of the Act, together with a copy of the schedule specifying such improvements, shall be served on the opposite party two months, at the least, before application shall be made to the Landed Estates Court to file the schedule of such improvements.

17. The Landlord or Tenant receiving such notice and disputing the claim made by the schedule, shall within one month after such receipt, serve notice on the opposite party that he disputes such claim either in the whole or in part, specifying the particulars so disputed, and that he will apply to the Civil Bill Court to determine the matter, and shall also, within such period, deliver a copy of such notice to the Clerk of the Peace, who shall record the same.

18. Upon the due service of such notice and copy, a Dispute shall be deemed to have arisen in respect of such alleged improvements, and the same shall be heard within such time, and in such manner, and subject to the same regulations as other Cases under these Rules.

19. The discretionary powers, with respect to the service and lodgment of notices given to the Chairman hereinbefore, shall apply to all notices respecting the Registration of Improvements under the sixth section.

PRACTICE OF THE COURT.

20. The practice, forms, and Rules, in force and used in the Civil Bill Courts with respect to Civil Bills and Civil Bill Ejectments, including all powers of amendment, shall, subject to these rules and orders, and so far as the same are not inconsistent with them, or with any of the provisions of the Landlord and Tenant Act (Ireland) 1870, be adopted with reference to proceedings under the said Act, so far as the same are applicable, *mutatis mutandis*.

21. The service of all notices relied on for any purposes shall, unless admitted by the opposite party, or otherwise allowed by the Chairman, be proved on oath at the hearing.

22. If at the hearing it shall appear to the Chairman that the case comes within the provisions of the 20th section of the Statute, or that the interests of persons not represented before the Chair-

man are involved, he may adjourn such hearing and direct such notice to be given to said persons as to him shall seem fit.

23. The Chairman shall be at liberty to review, rescind, or vary any order previously made by him at any Land Session during the continuance of the ordinary Sessions of which such Land Session shall form a part, but not afterwards, except upon the application in court of both parties, or their consent in writing.

FEES FOR PROCEEDINGS UNDER THE ACT.

24. In all proceedings under this Act the fees specified in the schedule (A) to these rules annexed, shall be the lawful fees and emoluments for the discharge of the duties therein specified by the persons therein named, and no other fees or emoluments shall be recoverable for the discharge of such duties, or be allowed in any bill of costs between party and party, or in any decree, dismiss, order, or award.

TAXATION OF COSTS.

25. The Chairman shall have power to give or withhold the costs, in the whole or in part, of any proceedings under this Act, and to order the same, or any portion thereof, to be paid by the opposite party, together with the reasonable expenses of necessary witnesses, and such expenses as he may consider to have been properly incurred in making copies of documents, or in making maps or surveys for the information of the Court; to be recoverable in the same manner as sums awarded for compensation, or decreed under this Act.

26. The Chairman shall, in all proceedings under this Act, upon request of either party or his attorney, tax the costs between party and party, and include the same in his decree or dismiss, order or award, when costs shall have been given against the opposite party; and shall, at the like request, tax the costs between attorney and client in such proceedings; and no costs shall be recovered in respect of any proceedings under this Act in the court of the Chairman, or preparatory thereto, unless the same shall have been so taxed.

REGULATIONS AS TO CLERKS OF THE PEACE.

27. The Clerks of the Peace shall keep in their offices separate books, in which shall be entered all notices of Claim, Dispute, or Set-off lodged with them in pursuance of the foregoing Rules, and all Orders, Interlocutory or Final, made in the matter of such Disputes, to be called The Record of Claim and Dispute

Books, which shall be accessible to the public between the hours of twelve and three o'clock daily (Sundays, Christmas Day, and Good Friday excepted), on payment to the Clerks of the Peace of the fee of One Shilling for each search to be made.

28. The Clerks of the Peace shall also keep Court Books, and shall enter therein the names of the witnesses examined at any hearing, with the date and description of any document used upon such hearing, and the orders of the Chairman, and shall sign the same, to be countersigned by the Chairman.

29. The decree, dismiss, or order of the Chairman shall be in the Form No. 7, 8, 9, or 10 in the Appendix to these Rules annexed, or as near thereto as may be, according to the circumstances of the case.

30. The Clerk of the Peace shall, before each sitting, make out a list for the Chairman, of all cases for hearing under this Act, and deliver or transmit the same to the Chairman.

31. All notices or documents relating to any matter under this Act may be delivered to the Clerk of the Peace either by giving same to him personally at his office, or to any Clerk or Assistant in charge of such office, there and not elsewhere; or by sending the same through the General Post Office in a prepaid letter duly registered, and addressed to the Clerk of the Peace at his office in the town where the same shall be kept, posted in such time as to admit of its delivery in the ordinary course within the periods herein required for the delivery of such notices.

32. Where a search shall be required from the Clerk of the Peace for any matter recorded in his Office under these Rules, a requisition in writing for such purpose shall be delivered to him, specifying the particulars required, and he shall thereupon file such requisition, and deliver with all reasonable expedition to the person demanding the same a certificate signed by him setting forth the particulars so required.

33. The Clerks of the Peace shall be entitled to receive for the filing such requisition, making such search, and delivering such certificate, the fee of Two Shillings.

DEPOSITS BY LANDLORDS OF COMPENSATION MONEY.

34. Deposits by landlords of compensation money, under the 21st section of the Act, shall be made in the Branch Banks of the Bank of Ireland in the respective counties, or, if no such branch exists in a county, then in such other Bank or Branch Bank within the same as the Chairman shall direct.

35. To effect such deposit the landlord shall obtain a docket, signed by the Clerk of the Peace, authorizing the lodgment of

the sum in the bank, in the name of the Clerk of the Peace, to the credit of the claim.

36. No deposit so made shall be drawn out without an order of the Chairman, made on notice to the landlord, or on consent in writing of the parties.

37. Where any deposit shall have been so made, the sum deposited shall be paid out only on the cheque of the Clerk of the Peace, countersigned by the Chairman of the County, which cheque, so countersigned, shall be a sufficient warrant to the bank for such payment.

APPEALS.

38. Any person dissatisfied with any Order of the Chairman under this Act, may appeal therefrom within one week from the last day of the ordinary Sessions in the town in which such Order shall be made, on giving notice of appeal in writing to the opposite party or to his attorney, and on lodging a copy of such Notice with the Clerk of the Peace, within said period of a week.

39. When such order shall have been made in the county or the county of the city of Dublin, then, (except as hereinafter mentioned,) such appeal shall be taken to the next ensuing sitting of the Judges to be selected by the Court for Land Cases Reserved; and when such order shall have been made elsewhere, then to the Judge or Judges of assize at the next ensuing assizes; but if the same shall be held within ten days from the termination of the ordinary sessions in the town in which such order was made, then to the second next sittings or assizes thereafter.

40. The Clerk of the Peace shall enter in the Record of Claim and Dispute Book the order of the Judge or Judges to be made on such appeal, and any directions given by them or him thereon, and shall also enter therein any order or directions made by the Court for Land Cases Reserved, when such order or directions shall be transmitted to him.

ARBITRATION.

41. The reference of any dispute under said Act to an Arbitration Court, and the appointment of the arbitrator or the arbitrators and umpire, shall be in the Form numbered (11) in the Appendix to these Rules, or in accordance therewith, and be signed by both parties; and such reference, with the nomination of the arbitrator or arbitrators and umpire, as the case may be, shall be lodged with the Clerk of the Peace before the first sitting of the Arbitration Court thereunder.

42. The Clerk of the Peace shall forthwith, on receipt of such reference and nominations, and on being satisfied by affidavit or

statutory declarations as to the signatures thereto, enter the same in the Record of Claim and Dispute Book; and thereupon any application or report in the matter of such Arbitration may be entertained by the Civil Bill Court, and such order may be made thereon, under the 25th section of said Act, as the Chairman may think right.

43. Where either party deserves the award of a Court of Arbitration to be recorded, he shall, ten days before the first day of the Land Session next ensuing the making of such award (if sufficient interval shall exist, and if not, then before the next following Session), serve notice on the opposite party of his intention to apply to the Chairman for such purpose, which application shall be heard in regular course, according to the practice of the Court.

44. On the hearing of such application, the Court may, if it shall think fit, and if such award substantially decides the dispute referred, order the same to be recorded; and the Award shall thereupon be duly recorded by the Clerk of the Peace in the Record of Claim and Dispute Book.

45. Reference of a Dispute to an Arbitration Court may be made at any time before the first day of the Land Session at which such dispute may be entered for hearing; or afterwards with the consent of the Chairman.

LIMITED OWNERS.

46. The application for an order to charge a holding with an annuity in respect of any compensation agreed on and paid to a tenant under the 27th section, shall be in the form (A) in the Appendix to these rules, or as near thereto as the case will admit, and shall be accompanied by a map or plan of the holding proposed to be charged, showing the contents thereof in acres, and the bounds (with the names of the adjoining occupiers) enlarged from the Ordnance Survey to the scale of 25·344 inches to a statute mile. The application shall be verified by the Affidavit of the Limited Owner (or of some other person allowed by the Chairman), in the form (B) in the Appendix to these rules, and shall, with a copy thereof, be lodged with the statement and map, in the custody of the Clerk of the Peace amongst the records of the office, two months before the commencement of the Land Session at which the application is to be made.

47. The Clerk of the Peace shall, on receipt of such application, and on payment to him of the necessary postal fee for transmission of the same as a registered letter, forward the copy by Post, so registered, to the Chairman for perusal.

48. The Chairman may, on perusal thereof, require such Searches, Information, or Copies of Documents as he may consider

necessary, and may also direct such advertisements to be published, and such notices to be given as he may think proper.

49. The Limited Owner shall, after lodging his application, and twenty-one days before the commencement of the Land Session at which it is to be heard, serve a notice in the form (C) in the Appendix to these rules, on the person named in such application, as entitled to the first estate of inheritance expectant upon the determination of the estate of the Limited Owner; or, if such person shall be a married woman, on her husband, and if an infant, idiot, or lunatic, on his or her guardian or committee, as the case may be, and on such other person or persons as the Chairman may direct.

50. The Limited Owner shall, at the hearing, give evidence of the settlement under which he claims, and of all such other documents as shall, in the opinion of the Chairman, be necessary.

51. The Chairman may, at the hearing of such application, adjourn the same, and direct such further inquiries to be made, or further notices to be served, as he shall deem expedient.

52. If the residence of the person entitled to the first estate of inheritance be not known, or if he be absent from the United Kingdom, or if any difficulty exist either in determining the person answering such description, or by reason of the idiocy, infancy, or lunacy, or coverture of any person, such facts should be specially stated in the application, and the directions of the Chairman be, in the first instance, taken thereon.

53. The Charging Order shall be in the Form (D) in the Appendix to these rules, and shall be entered by the Clerk of the Peace in a book to be kept for that purpose, and shall be signed therein by the Chairman—and a copy of any order so made, attested and signed by the Clerk of the Peace, shall, on application be furnished to any person requiring the same, on payment to him for such copy of the sum of Three Pence per folio, or part of a folio.

54. Applications by Landlords or Tenants to the Civil Bill Court for the confirmation of any agricultural Lease granted, or proposed to be granted, under the 28th section of the Act, shall be in the Form (E or F), as the case may be, in the Appendix to these rules, or as near thereto as circumstances will admit, and be verified by affidavit, and be lodged with the Clerk of the Peace two months before the commencement of the Land Session at which the application is to be heard.

55. The Limited Owner or Tenant, as the case may be, shall, after lodging his application, and fourteen days before the commencement of the Land Session at which it is to be heard, serve notice on the Tenant or Limited Owner, as the case may be, of his intention to apply for the confirmation of such Lease, or proposed Lease.

56. At the hearing of such application the Chairman may direct further inquiries to be made, or further notices to be served, or advertisements to be published, if he shall deem it, from special circumstances, expedient to do so.

57. The Order confirming any Lease, whether with or without modifications, shall be entered by the Clerk of the Peace in a separate book to be kept for that purpose, and shall be signed therein by the Chairman, and shall be certified by the Clerk of the Peace on the original Lease and counterpart, or either of them, when such Lease and counterpart shall have been duly signed by the parties respectively, and when the same, or either of them, shall be presented to him for such purpose; and such certificate shall be also countersigned by the Chairman, and a copy of any order so made, attested and signed by the Clerk of the Peace, shall, on application, be furnished to any person requiring the same, on payment to him of Three Pence per folio, or part of a folio.

58. All notices or other documents to be served on any person under the portion of the Act relating to Limited Owners may be served on him personally, or on any inmate of his house above sixteen years of age, at his usual place of abode; or, where such person resides out of the country, and within the United Kingdom, by sending the same, through the Post, in a prepaid registered letter, addressed to him at his usual or last known place of abode, or may be served in such other manner as to the Court shall seem expedient. Any document to be served by Post shall be posted in such time as to admit of its being delivered, in due course of delivery, within the period prescribed for the service thereof; and, in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put, as a prepaid registered letter, into the Post Office.

DEFINITIONS.

In the construction of these Rules the word Order shall include any Decree, Award, or Ruling.

The word Settlement shall include any Act of Parliament, Will, Deed, or other Assurance constituting the title of the Limited Owner, or the Person having the first estate of inheritance.

The expression Clerk of the Peace, shall include the Deputy Clerk of the Peace.

In the computation of time for the purposes of these Rules Month shall mean calendar month; and when the computation shall be by days, Sunday shall be excluded, and the days shall be exclusive of the first and inclusive of the last.

APPENDIX TO THE RULES.

FORMS FOR USE IN ORDINARY LAND CASES.

(I.)—Form of a Notice of Claim for Disturbance.

Landlord and Tenant (Ireland) Act, 1870.

County of Limerick,
Division of Newcastle.
A. B., Tenant of the lands of Mount Hawk, in the barony of and parish of
Claimant;

C. D., of Landlord of the above-named Tenant in respect of the said lands.
Respondent.

The said *A. B.*, asserting that he is disturbed in the occupation of such lands by the act of his Landlord.

[*Here state nature of the alleged disturbance.*]

claims compensation for the loss sustained by him in quitting his holding, as follows :

£ s. d.

years rent thereof (the holding being valued at per annum), and the annual rent being
The said *A. B.* also claims compensation for Improvements made on said lands by himself, and by , his predecessor in title [*if such is the case*], viz. :—

[*Here state nature of improvements if claimed for, such as Permanent Improvements, Reclamation of Waste Lands, Ordinary Improvements, etc., as the case may be.*]

(Signed) *A. B.*

Dated 1st August, 1870.

[Every item of demand must be specified with as much particularity as practicable ; including dates, amounts, and the nature and description of the claim.]

(II.)—FORM OF A NOTICE OF CLAIM FOR IMPROVEMENTS WHERE THE TENANT CLAIMS FOR IMPROVEMENTS ONLY,

Landlord and Tenant (Ireland) Act, 1870.

County of Limerick.
Division of Newcastle.
A. B., Tenant of the lands of Mount Hawk, in the barony of
and parish of
Claimant;

C. D., of
Landlord of the above-named Tenant, in respect of the said lands,
Respondent.

The said *A. B.*, claims compensation for Improvements made on the said lands by the said *A. B.*, [*or* by *E. F.*, his predecessor in title, or by both, as the case my be], as follows:—

[Enumerate and describe particularly the alleged improvements as in the preceding form.]

(Signed) *A. B.*

Dated the 28th August, 1870.

(III.)—FORM OF A NOTICE OF CLAIM BY AN ULSTER TENANT IN CASE OF DISTURBANCE, NOT CLAIMING UNDER ANY ULSTER TENANT-RIGHT CUSTOM,

Landlord and Tenant (Ireland) Act, 1870.

County of Donegal,
Division of Buncrana.
A. B., Tenant of the lands of Mahanabo, in the barony of ,
and parish of ,
Claimant;

C. D., of
Landlord of the above-named Tenant, in respect of the said lands,
Respondent.

The said *A. B.* asserting that he is disturbed in the occupation of the said lands now held by him by the act of his landlord,

[*Here state nature of alleged disturbance.*]

and not claiming the benefit of any Ulster Tenant-right Custom, claims compensation for the loss sustained by him in quitting his holding [*here adapt the preceding forms to the statement of the present claim.*]

(Signed) *A. B.*

Dated the 1st September, 1870.

(IV.)—FORM OF NOTICE OF CLAIM IN RESPECT OF AN ULSTER TENANT-RIGHT CUSTOM,

Landlord and Tenant (Ireland) Act, 1870.

County of Donegal,
Division of Buncrana,
A. B., Tenant of the lands of Glounavadara,
Claimant;

C. D., of
Landlord of the above-named Tenant, in respect of the said lands,
Respondent.

The said *A. B.*, claims to be entitled to the benefit of the following Tenant-right Custom, viz. [*here set out the right claimed*]; *or* claims the following sum as due to him by way of compensation under a tenant-right custom, &c. [*as before*].

[Here state with particularity the tenant-right custom in respect of which compensation is claimed, together with the amount and detailed particulars of the claim.]

(Signed) *A. B.*

20th August, 1870.

[This form can be adapted to the case of a claim under section 2.]

(V.)—FORM OF A LANDLORD'S NOTICE OF DISPUTE OF THE WHOLE CLAIM,

Landlord and Tenant (Ireland) Act, 1870.

County of Kerry,
Division of Cahirciveen.
A. B., tenant of the lands of Tubber, situate in the barony of ,
and parish of ,
Claimant;

C. D. of ,
landlord of the above-named tenant, in respect of the said lands,
Respondent.

Take notice, that I, the said *C. D.*, landlord of the said *A. B.*, dispute the claim, and every part thereof, made by him for compensation in respect of the lands of Tubber, and that in the event of the claim of the said *A. B.*, or any portion thereof, being allowed, I will rely upon the following items of set off in satisfaction or reduction of said claim.

[Here enumerate and describe the items of the alleged set off with as much particularity as possible, including dates, amounts, and the nature and description thereof.]

(Signed) *C. D.*

(VI.)—FORM OF A LANDLORD'S NOTICE OF DISPUTE OF A PORTION OF A CLAIM.

Landlord and Tenant (Ireland) Act, 1870.

County of Kerry,
Division of Cahirciveen.
A. B., tenant of the lands of Tubber, situate in the barony of , and parish of ,
Claimant;
C. D., of landlord of the above-named tenant, in respect of the said lands,
Respondent.

Take notice, that I, the said *C. D.*, landlord of *A. B.*, dispute the following items of the claim made by him for compensation in respect of the lands of Tubber.

	£	s.	d.
No. 1. The item for the erection of buildings,	20	0	0
No. 2. The item for unexhausted tillages and manures, ...	50	0	0
But I admit and am willing to allow the item, No. 3, for gates and fences, ...	10	0	0

And I hereby give notice that I will rely upon the following items of set off, namely:—

[Insert particulars, as in preceding Form directed.]

(Signed,) *C. D.*

(VII.)—Form of Decree,
Landlord and Tenant (Ireland) Act, 1870.

County of Wicklow,
Division of Arklow.
A.B., of The Scalp, tenant of the lands of Goat's Hill, situate in the barony of , parish of , and county aforesaid, *Claimant;*

C. D., of landlord of the above-named tenant, in respect of the said lands, *Respondent.*

} By the Chairman of Quarter Sessions for the County of [Wicklow.]

The Court having heard and investigated a claim, duly made and prosecuted under the said Act, in which the Claimant sought compensation in respect of [disturbance in his holding of the said lands to the amount of £] and for [improvements effected therein to the amount of £] and for [ ], and in which the said *C. D.*, admitted or disputed such claim, and relied on a claim for [set off, &c.] (as the case may be); *(or, if no appearance by the Respondent)* [and it appearing to the Court that notice of said claim was duly served upon the said *C. D.*]* and it appearing to the Court that the said *A. B.* has established his claim for

[*Here state particulars of loss sustained by the Tenant in quitting his holding which have been allowed.*]

and for

[*Here state the particulars of improvements and payments to predecessors allowed.*]

making together the sum of £ , and it further appearing that the said *C. D.* has established

[*Here state particulars of any set off, objection, default, or conduct of the Tenant, allowed or taken into account.*]

making together the sum of £ [*or has failed to establish his said claim.*]

It is adjudged that after deducting the said sum of £ from the said sum of £ , there is due by the said *C. D.* to the

said *A. B.* the sum of £ in respect of the said claim, which said sum of £ the said *C. D.* is hereby ordered to pay to the said *A. B.*, together with the sum of £ , for costs and £ for expenses of witnesses. And the several Sheriffs of the respective counties of Ireland are hereby commanded, notwithstanding any liberty within their bailiwicks, to enter the same, and take in execution the [body or goods as the case may be] of the Respondent(s) to satisfy the said sum of £ and costs.

Dated this day of in the year One Thousand Eight Hundred and Seventy.

Sum recovered, . . £
Costs, ... £
Witnesses' expenses, . £
Warrant, . . . £

E. F.—Chairman of Quarter Sessions for said county.
G. H.—Clerk of the Peace for the said county.
I. K.—Attorney for the Claimant(s).

[NOTE.—If any default or unreasonable conduct of either party under the 18th section has been relied on at the hearing, the Decree should notice the fact, and specify the allowance or disallowance of the claim and the sum (if any) awarded in respect of such item.]

(VIII.)—FORM OF DISMISS,
Landlord and Tenant (Ireland) Act, 1870.

County of Wicklow,
Division of Arklow,
A. B. of the Scalp, Tenant of the lands of Goat's Hill, situate in the barony of ,
parish of ,
and county aforesaid,
Claimant;

C. D., of
in said county, Landlord of the above-named Tenant, in respect of the said lands,
Respondent.

By the Chairman, &c. [Proceed as in last form to *.]

And it appearing to the Court that the said *A. B.* has failed to establish his said [several claims] or his said claim in respect of , [*see preceding form*] but has established his said claim in respect of to the amount of £ And it further appearing that the said *C. D.* has established his claim for [*see preceding form*] to an amount equalling [or exceeding] the said sum of £ It is therefore ordered that the claimant's said claim be, and the same is hereby dismissed,

and that the Respondent(s) do recover against the Claimant(s) the sum of £ costs of this dismiss, together with for witnesses' expenses. And the several Sheriffs in Ireland are hereby commanded, notwithstanding any liberty within their respective bailiwicks, to enter the same and take in execution the Claimant's [body or goods, as the case may be] to satisfy and pay the Respondent(s) the said cost of obtaining this dismiss.

Dated at , this day of , One Thousand Eight Hundred and Seventy.

Cost of dismiss, . . . £

Witnesses' expenses, . . . £

E. F.—Chairman of Quarter Sessions for said county.

G. H.—Clerk of the Peace of said county.

I. K.—Attorney for the Respondent(s).

(IX.) FORM OF DECREE ON A CLAIM UNDER AN ULSTER TENANT-RIGHT CUSTOM,

Landlord and Tenant (Ireland) Act, 1870.

County of Donegal,
Division of Buncrana.

A. B., of , Tenant of the lands of Mahanabo, in the barony of parish of and county aforesaid,
Claimant;

C. D., of , Landlord of the said *A. B.*, in respect of the said lands,
Respondent.

By the Chairman, &c.

The Court having heard and investigated a claim duly made and prosecuted under the said Act, in which the Claimant made a claim in respect of a certain Ulster Tenant-right custom, that is to say [here set out the right claimed], [here adapt Form No. VII. to the circumstances of this case].

[This form can be adapted to case of a claim under sec. 2.]

(X.) FORM OF DISMISS OF A CLAIM UNDER AN ULSTER TENANT-RIGHT CUSTOM,

Landlord and Tenant (Ireland) Act, 1870.

County of Donegal,
Division of Buncrana.
A. B., of , Tenant on the lands of Mahanabo, in the barony of parish of , and county aforesaid,
Claimant;

C. D., of , Landlord of the said *A. B.*, in respect of the said lands,
Respondent.

By the Chairman of Quarter Sessions for said county. [Proceed as in last form to * and then adapt Form No. VIII, to meet the circumstances of the case.]

(XI.)—FORM OF SUBMISSION TO ARBITRATION AND APPOINTMENT OF ARBITRATORS AND UMPIRE,

Landlord and Tenant (Ireland) Act, 1870.

County of Kilkenny,
Division of Thomastown,
John Smith, of , Tenant of the lands of Piltown, in the barony of ,
Claimant;

Patrick Power, of , Landlord of the above-named Tenant in respect of the said lands,
Respondent.

Whereas John Smith has claimed for compensation under this Act, in respect of the lands in the title hereof, the sum of £ , by reason of disturbance in his occupation, by the act of the said Patrick Power [as the case may be]; and the sum of £ , for improvements effected thereon, as appears by the notice of claim bearing date the , lodged on the day of , in the office of the Clerk of the Peace. And whereas the said Patrick Power disputes the said claim, and relies moreover, in satisfaction or reduction of same, upon a set off amounting to £ , for or £ , damages for [as the case may be], as appears by the notice of dispute, bearing date the day of , lodged in the office of the Clerk of the Peace.

It is hereby agreed by and between the said parties, to refer such dispute to the order, award, and final determination of *A. B.* of and *C. D.* of pursuant to the provisions of the said Landlord and Tenant (Ireland) Act, 1870, in that behalf provided. Accordingly the said John Smith hereby appoints *A. B.*, of , to be and act as his arbitrator herein, and the said Patrick Power hereby appoints *C. D.* of , to be and act as his arbitrator in accordance with the provisions of the said Landlord and Tenant (Ireland) Act, 1870.

Dated this day of

(Signed) JOHN SMITH.

Witness—

(Signed) PATRICK POWER.

Witness—

The said *A. B.* and *C. D.*, the arbitrators so hereby appointed do hereby, and before entering upon the matters herein referred to them, in accordance with the said Act, appoint *E. F.* of to be, and act as Umpire, in case of difference between them.

Dated this day of

(Signed) *A. B.*
C. D.

Witness—

FORMS FOR USE IN CASES OF LIMITED OWNERS.

(A.) FORM OF APPLICATION BY A LIMITED OWNER TO THE CHAIRMAN OF QUARTER SESSIONS, FOR A CHARGING ORDER, IN RESPECT OF COMPENSATION AGREED ON, AND PAID,

Landlord and Tenant (Ireland) Act, 1870.

TO THE CHAIRMAN OF QUARTER SESSIONS OF THE COUNTY OF———

County of
Division of
In the case of the Estate of *A. B.*, a Limited Owner of land, and *C. D.* the person entitled to the first subsequent estate of inheritance there-

The Applicant sheweth as follows:

1. That under a deed dated the day of 18 , and made between, &c. [*or*, under the last will of , dated the day of , and duly executed], the Applicant is entitled to an estate for the term of his life, and for his own benefit, in the lands of

2. That the estate in the lands subject to the trusts of such deed [*or* will], is an estate in fee-simple [*or*, an estate for lives, or years renewable for ever, *or as the case may be.*]

3. That the said *C. D.*, of , now residing at , (the post town of which is , in the county of) is the person now entitled to the first estate of inheritance in said lands, expectant on the determination of the Applicant's estate therein.

4. That the said *C. D.* is of full age, and not under any disability [*if* an infant, lunatic, &c., state the fact, and the name and residence of the guardian, committee, &c.]

5. That the Applicant has been in receipt of the rents and profits of said lands since the day of 18 .

6. That the Applicant on the day of , agreed with *E. F.* of , then being a tenant [from year to year, or as the case may be], of a portion of said lands, called , specified in the map hereto annexed, containing acres, or thereabouts, to pay to him the sum of £ , as the amount of compensation payable to him for [disturbance, improvements, &c. *as the case may be*], under the 27th section of said Act.

7. That such agreement was a fair and equitable one, as between him and such tenant, having regard to said Act, and that he has paid the said sum of £ , to the said *E. F.*

8. That the Applicant now seeks for an order to charge the said holding of , in respect of such payment, with the annuity of £ , to be limited in favour of the Applicant *A. B.*, his executors, administrators, and assigns, to be payable for a term of Thirty-five years, from the day of [the date of the payment of the principal sum].

A. B.

[Signature of Applicant and Residence.]

[Map of Holding, with the bounds and names of adjoining occupiers, to be annexed enlarged from the Ordnance Survey to the scale of 25·344 inches to a Statute mile.]

(B.)—FORM OF AFFIDAVIT VERIFYING THE APPLICATION BY A LIMITED OWNER FOR A CHARGING ORDER IN RESPECT OF COMPENSATION PAID,

Landlord and Tenant (Ireland) Act, 1870.

County of
Division of
In the case of the Estate of *A. B.*, a Limited Owner, &c.

A. B. of , in the county of maketh oath and saith, that he has read the accompanying application for a Charging Order, signed by him, or by [as the case may be], and that the contents thereof are true, to the best of his knowledge, information and belief.

[Signature of deponent.]

(C.)—FORM OF NOTICE TO BE SERVED ON THE PERSON HAVING THE FIRST ESTATE OF INHERITANCE IN THE LANDS, BY A LIMITED OWNER WHO HAS LODGED HIS APPLICATION FOR A CHARGING ORDER IN RESPECT OF COMPENSATION AGREED ON, AND PAID.

SIR,—Take notice, that an application has been lodged by me with the Clerk of the Peace for the county of , claiming to be the Limited Owner of the lands of , in the county of , praying that the Chairman of the said county may order the holding of , late in the occupation of E. F., as my tenant, to be charged in my favour with the annuity of £ for the term of thirty-five years, in respect of the sum of £ paid by me to the said E. F. by agreement, as compensation to him for [*disturbance, improvements, &c., as the case may be*] under the 27th section of the Land Improvement (Ireland) Act, 1870, as mentioned in such application, and I hereby give you notice, that you are stated therein to be the person having the first estate of inheritance in said lands, within the meaning of the said Act; and that such application will be heard at the Land Session to be held at on the day of next, at which, if you object to such application, you are hereby required to attend; or in default the Chairman will proceed as he may deem right.

(Signed) *A. B.* [Limited Owner].

To *C. D.* [the person having the first estate of inheritance in the lands] *to be addressed to his residence and post-town.*

(D.)—FORM OF A CHARGING ORDER FOR AN ANNUITY IN RESPECT OF COMPENSATION AGREED ON AND PAID BY A LIMITED OWNER,

Landlord and Tenant (Ireland) Act, 1870.

BY THE CHAIRMAN OF THE QUARTER SESSIONS OF THE COUNTY OF——

County of
Division of
In the case of the Estate of *A. B.*, a Limited Owner of land, and *C.D.*, the person entitled to the first estate of inheritance therein.

It appearing to the Court that the said [*A. B.*] being a Limited Owner of the lands of , in the said county, on the day of 18 agreed with [*E. F.*] then being tenant to him [*state tenant's* interest] of a portion of the said lands called , containing acres, or thereabouts, to pay to the said [*E. F.*] the sum of £ , as the amount of compensation payable for disturbance, improvements, &c., [*as the case may be*] under the 27th section of said Act, and that the said [*A. B.*] had paid to the said [*E. F.*] the amount of said compensation.

And it appearing that the said [*A. B.*] duly caused to be served personally [*or, if otherwise, state mode of service*] on [*C. D.*], the person entitled to the first estate of inheritance in said lands, a notice signed by the said [*A. B.*] stating the fact of such agreement and payment, and his intention to apply for an order to charge such holding with an annuity of £ in his favour for the term of thirty-five years, and the said [*C. D.*] having appeared before the Court, was duly heard [*or in case of no appearance, say,*] And whereas proof was given to the Court that twenty-one days' previous notice of the intention of the said [*A. B*] to make such application had been duly served on the said [*C. D.*], [or his agent, etc.] And it having been proved to the satisfaction of the Court, that the said sum of £ was paid by the said [*A. B.*], to said [*E. F.*] *Now, it is hereby ordered* that the lands of , containing acres, in the barony of , and county of , as specified in the map lodged in this case in the Office of the Clerk of the Peace for the said county, be charged with an annuity of £ in favour of the said [*A. B.*] his executors, administrators, and assigns, for the term of thirty-five years,

payable on the day of in each year, commencing from the day of 18

[*Follow the words of the Order as made by the Chairman.*]

Dated this day of

Chairman of the Quarter Sessions of the county of

(E.)—FORM OF APPLICATION BY A LIMITED OWNER TO THE CHAIRMAN OF QUARTER SESSIONS FOR AN ORDER ON CONFIRMATION OF A LEASE, OR PROPOSED LEASE,

Landlord and Tenant (Ireland) Act, 1870.

TO THE CHAIRMAN OF QUARTER SESSIONS OF THE COUNTY OF———

County of
Division of
In the case of *A. B.*, (a Limited Owner) seeking for an Order of Confirmation of a Lease, [or proposal for a Lease.]

The applicant showeth as follows:

1. That he is entitled to an estate for his life, and for his own benefit, in the lands of , in the barony of , and county of , under a deed dated the day of , made between etc., [*or* under the last will, *or*, etc., of , dated the day of , and duly executed.]

2. That he is in receipt of the rents of said lands.

3. That he has granted [*or* has proposed to grant] to (*C. D.*) an agricultural lease of the lands of containing acres, or thereabouts, part of said estate, the date of such lease or agreement being the day of 18

4. That such lease [*or* proposed lease] is for the term of years, [*as the case may be*] at the yearly rent of £ which is a fair yearly rent for the same; the General Tenement Valuation thereof being £ and that the applicant has not received, or contracted for, nor will he receive or contract for any consideration in the nature of a fine, premium, or foregift for said lease [*or* proposed lease.]

4. That the holding thus leased [*or* proposed to be leased] does not include any mansion house or demesne lands.

The applicant, therefore, applies that such lease [*or* proposed lease] may be confirmed by the Court.

[Signature of Applicant.]

Verification.

County of
Division of
In the case of the Estate of *A. B.*, a Limited Owner, &c.

A. B. of , in the county of , maketh oath and saith, that he has read the accompanying application for an Order of Confirmation of a Lease, signed by him, or by [as the case may be], and that the contents thereof are true, to the best of his knowledge, information, and belief.

[Signature of deponent.]

(F.)—FORM OF APPLICATION BY A TENANT [*or* PROPOSED TENANT] TO THE CHAIRMAN OF QUARTER SESSIONS FOR AN ORDER OF CONFIRMATION OF A LEASE, OR PROPOSED LEASE,

Landlord and Tenant (Ireland) Act, 1870.

TO THE CHAIRMAN OF QUARTER SESSIONS OF THE COUNTY OF ———

County of
Division of
In the case of *E. F.*, a tenant [*or* proposed tenant] seeking for an Order of Confirmation of a lease [*or* proposed lease.]

The Applicant showeth as follows:

1. That [*A. B.*] of , in the county of , and now residing at , is, as Limited Owner, entitled to an estate for his life, and for his own benefit, in the lands of , in the barony of , and county of

2. That the said [*A. B.*] is in receipt of the rents of said lands, and has by lease bearing date the day of granted the lands of , containing acres, or thereabouts, part of said estate to applicant, as tenant for the term of years, [*as the case may be*], and that he is now in possession thereof. [*If a proposal for a lease, alter the preceding paragraph accordingly.*]

3. That the yearly rent reserved on said lease [*or* proposed to be reserved] is £ , and is a fair yearly rent for the same, the General Tenement Valuation thereof being £ ; and that the applicant has not given, or contracted for, nor will he give, or contract for, any consideration in the nature of a fine, premium, or foregift for said lease [*or proposed lease.*]

4. That the holding thus leased [*or proposed to be leased*] does not include any mansion house or demesne lands.

The applicant, therefore, applies that such lease [*or proposed lease*] may be confirmed by the Court.

[Signature of applicant.]

Verification.

County of
Division of
In the case of the Estate of *E. F.*, a Tenant, &c.

A. B. of in the county of , maketh oath and saith, that he has read the accompanying application for an Order for Confirmation of a Lease, signed by him, or by [as the case may be], and that the contents thereof are true, to the best of his knowledge, information, and belief.

[Signature of deponent.]

SCHEDULE (A).

SCHEDULE OF FEES REFERRED TO IN RULE 24, *Landlord and Tenant (Ireland) Act*, 1870.

COUNSEL'S FEES.

	£	s.	d.
To claimant's counsel, where the sum in the Notice of Claim shall not exceed £100, ...	1	1	0
Where the claim shall exceed £100, ...	2	2	0
To Defendant's counsel, like fees.			

ATTORNEY'S FEES.

To the claimant's attorney, for attending and taking instructions in all Land Cases, reading over leases, deeds, wills, or other documents, ...	0	6	8
Drawing the Notice of Claim,...	0	3	4
For every copy thereof actually lodged, served, or posted,...	0	1	0
To the claimant's attorney, for advising the proofs, entering the case, and attending the hearing,	1	1	0

	£	s.	d.
To respondent's attorney, for taking instructions, reading over leases, &c.	0	6	8
Drawing the Notice of Dispute, with particulars of Set-off, or Claim to accompany such Notice (if any),	0	3	4
For every copy thereof actually lodged, served or posted, ...	0	1	0
To the respondent's attorney for advising the proofs, entering the case, and attending the hearing,	1	1	0
Attending to obtain consent to act as guardian *ad litem*, and drawing consent therefor, ...	0	3	4
To the claimant's or respondent's attorney for preparing any decree, dismiss, or award; and attending the chairman to sign the same, ...	0	6	8
Drawing costs between party and party, and attending the chairman for taxation thereof, ...	0	3	4
Preparing instructions for counsel, and attending him whenever counsel is employed, ...	0	6	8
For moving or opposing any interlocutory application to the Court, ...	0	2	6
Preparing the notices and affidavits where necessary to support or resist such application, a sum not exceeding, ...	0	5	0

APPEALS.

To counsel for the parties respectively the same fees on appeals as on the hearing before the chairman.			
To attorneys for the parties respectively, ...	1	1	0

O'HAGAN, *C.*
EDWARD SULLIVAN, *M.R.*
JAMES HENRY MONAHAN, *C.J. Com. Pleas.*
D. R. PIGOT, *C.B.*
HEDGES EYRE CHATTERTON, *V.C.I.*
JAMES O'BRIEN,
J. D. FITZGERALD.
R. DEASY.
JOHN GEORGE.
JAMES A. LAWSON.

The Landlord and Tenant (Ireland) Act, 1870.

RULES,

WITH

APPENDIX OF FORMS, AND DIRECTIONS,

FOR

CARRYING OUT SALES THROUGH THE LANDED ESTATES COURT.

RULES.

THE PRIVY COUNCIL IN IRELAND, under the authority of the LANDLORD AND TENANT (IRELAND) ACT, 1870, and pursuant to the provisions of the same, have made and issued the following code of RULES, FORMS, and DIRECTIONS for the carrying out of sales of land to tenants under the said Act.

1. In the construction of these Rules and the Appendix hereto, and of any future Rules to be made under the authority and for the purposes aforesaid, the same meanings shall be assigned to words as are assigned to them by the said Act; the word "Board" shall mean Board of Commissioners of Public Works; and the word "Court" shall mean the Landed Estates Court; and the word "Judge" shall mean either of the Judges thereof; and the words "Examiner," "Officer," and "Clerk," respectively, shall be deemed to refer to officers of the said Court; and any act, matter, or thing to be done by the Court may be done by either of the Judges thereof.

2. Every agreement to be made for the purchase of a tenant's holding under the second part of the Act, shall be in writing, signed by the parties, and shall be subject to the approval of the Court. The agreement may be in the form [No. 1] in the Appendix hereto, and may comprise the holdings of two or more tenants.

3. All proceedings in the Court under the second part of the Act shall commence by STATEMENT, following the form No. 2, 3, 4, or 5 in the Appendix hereto, with such variations as the case may require. The statement shall be fairly written on post paper, book-wise, with sufficient margin, and shall be divided into para-

graphs ; and the same shall be signed and verified, and lodged in the office of Records and Affidavits of the Court, as in the case of a petition for sale. The address of every person named as interested in the premises shall be set forth, as far as the same may be known to the applicant. Where the application is made by the landlord several sales of holdings may be comprised in the same statement.

4. As the conveyance by the Court to the tenant will discharge the holding from any sub-tenancy existing therein, no sale of any holding will be made under the Act to any tenant unless such tenant be under his tenancy in, or entitled to, the actual possession of the holding, or unless every sub-tenant on the holding consents in writing to such sale being made.

5. To the statement shall be annexed a copy of the agreement for sale ; and also the following schedules, so far as the nature of the case will admit, viz. :—

(1.) A schedule of the parcels or townlands, with the tenants on each, their respective quantities, rent, and tenure, and general valuation of the premises ; also the head-rent (if any), rent-charge, and other outgoings ; also the tenure or interest of each tenant in his holding, and who is in the actual occupation thereof.

(2.) Schedule of all charges and incumbrances, existing or claimed ; also the amounts due on each, and the place of abode and post-town of each person interested therein, so far as the same is known.

It shall not be necessary to inquire into, or in the statement or the schedule thereto to set forth, any rights of way, rights of turbary, or other easements.

Every statement shall be accompanied by a copy for the use of the Judge.

On the lodgment of a statement, the date of reception and a distinguishing number shall be endorsed thereon, and on the accompanying documents, by the officer receiving the same, who shall thereupon transmit the same to the Examiner's Office to be laid before the Judge. An Index Book shall be kept in the Record Office of every statement, with the name of the Judge in rotation before whom such statement is to be sent.

6. Where the estate is in settlement, the statement shall set forth the names and addresses of the first tenant in tail in existence (if any) under the settlement, and of all persons having any beneficial estate or interest under, or by virtue of the settlement prior to the estate of such tenant in tail, and of all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail. And if there shall be no

tenant in tail in existence, the statement shall set forth the names and addresses of all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also of all trustees having any estate or interest on behalf of any unborn child.

7. All moneys (including any sum required by the Court to be lodged as a security for costs in pursuance of the 34th section of the Act) shall be lodged in the Bank of Ireland to the account of the Court and the credit of the particular matter.

8. The original deeds or documents, material to the title, need not in the first instance be lodged in Court unless the Judge shall otherwise direct. Any person having the custody of any document relating to the title shall, if so ordered and on such terms as the Judge shall think just, produce or hand over the same to the solicitor having the carriage of the proceedings for the purposes of the sale. The Judge will state in its directions on the title whether it requires the deeds to be deposited in Court, or merely produced to the Examiner for inspection. The abstract of title must show the title of the purchasing tenant as well as the title of the landlord.

9. The draft of the conveyance to a purchasing tenant shall be sent for approval to the Solicitor of the Board of Works whenever the Board has advanced any part of the purchase-money, and shall be in the Form [No. 8] in the Appendix hereto, with such variations as the case may require.

10. If any purchasing tenant who has obtained an advance of money from the Board towards the completion of his purchase, shall for the space of two months thereafter omit or neglect to take the proper steps to obtain from the Court a conveyance of the premises, the solicitor of the Board may (with the sanction of the Court) take steps to have such conveyance prepared and executed. And in such case the costs of the conveyance, and the stamp duty, and other outlay incidental thereto, shall be a lien or charge in favour of the Board on the premises conveyed and on the deed of conveyance thereof.

11. The agreement for sale may provide for the costs and expenses incidental to the sale. So far as the same may not be so provided for by the agreement or by the Act or rules, all costs and expenses incidental to sales under the second part of the Act shall be payable as follows :—

(1.) The per centage fee or duty, the costs of the statement, of making out the landlord's title, and of subsequent proceedings shall be borne by the vendor, and shall be a charge on any fund in Court to which he is entitled.

(2.) The costs of making out the tenant's title, and of pre-

paring and taking out the conveyance shall be borne by the purchaser.

12. Any person coming within the provisions of the 39th section of the Act shall be entitled to such sum not exceeding two guineas for his costs incidental to the proceeding as the Judge may direct, or as the Examiner may certify for; and the amount so certified for shall be payable forthwith on production of such certificate at the Paymaster's Office, Dublin Castle. Any further claim for costs which may be made under the 39th section of the Act shall be brought before the Judge on notice to the solicitor for the Treasury.

13. In the absence of any contract in pursuance of the "Attorneys and Solicitors Act, 1870," as to the costs of proceedings under the second part of the Act, they shall be taxed by the Taxing Officer of the Court according to the schedule of fees for the time being of the Court. A fee of 1½d. for every folio of 72 words may be charged for attested copies of documents. No other sums or fees shall be payable under this Act to any officer or clerk of the Court.

14. If in the peculiar circumstances of any case it shall appear to the Judge safe and expedient, he may make an order dispensing with the lodgment of an abstract of title, schedule of incumbrances, or rental, or any or all of them, and such order shall state what documents shall be used in lieu of the abstract, schedule, or rental, so dispensed with.

15. The Judge may, by his Order, direct that any moneys arising from a sale under the second part of the Act which are not immediately distributable, shall be laid out in the purchase of land which shall be limited and settled, to such uses and upon such trusts and for such purposes as shall be in such order stated; and until such money can be so laid out it may under such order as aforesaid be transferred or paid over to the Trustees to be appointed or approved by the Judge for the purpose of being so laid out as aforesaid, with such power for the investment thereof in Government Stocks, Funds, or Securities in the meantime, and such directions for the payment of the income of such investment in the manner in which the rents of the land to be purchased would be applicable, as the Judge shall think fit.

16. The Judge may, by his Order, appoint trustees to receive and invest, and from time to time to call in and re-invest, any moneys arising from a sale under the second part of the Act, which are not immediately distributable, and such order shall declare the trusts affecting such moneys, and the nature of the securities on which the trustees may invest the same: Provided always that no investment or re-investment of the said moneys

(save in the Government funds) shall be made by the said trustees without the consent of the Judge.

17. Where any person who (if not under disability) might have made any application (other than an application to sell an estate under the said Act), given any consent, done any act, or been party to any proceedings under the said Act, shall be a minor, idiot, lunatic, or married woman, the guardian, committee of the estate, and husband respectively, of such person, may make such applications, give such consents, do such acts, and be party to such proceedings, as such persons respectively, if free from disability, might have made, given, done, or been party to, and shall otherwise represent such person for the purposes of the said Act; but a married woman, entitled for her separate use (with or without power of anticipation), shall, for the purposes of the said Act, be deemed a feme sole: Provided always, that where there shall be no guardian or committee of the estate of any such person as aforesaid, being infant, idiot, or lunatic, or where any person, the committee of whose estate, if he were an idiot or lunatic, would be authorised to act for and represent such person under the said Act, shall be of unsound mind or incapable of managing his affairs, but shall not have been found idiot or lunatic under an inquisition, it shall be lawful for the Judge to appoint a guardian of such person for the purpose of any proceedings under the said Act, and from time to time to change such guardian; and where the Judge sees fit, he may appoint a person to act as the next friend of a married woman for the purpose of any proceeding under the said Act, and from time to time remove or change such next friend; and the Order appointing any person to act as guardian or next friend of a person under disability shall be served on such guardian or next friend by the Solicitor having the carriage; and all Notices and Orders subsequently served upon such persons shall be deemed to have been duly served upon the party so under disability.

18. A notice of any sale to be made under the second part of the said Act, and which may be in the Form No. 6 in the Appendix hereto, shall be served on every registered incumbrancer; and all notices to which any registered incumbrancer is entitled shall be served by sending the same through the post, in a prepaid letter, addressed to such incumbrancer at his last known place of abode, as shown by some affidavit or verified statement, filed in the Court; and all such services as aforesaid shall be effected through the Notice Office of the Court. All other services shall be effected in the manner directed by the rules of the Landed Estates Court for the time being.

19. All business, save when transferred to the Court list as

hereinafter provided, shall be regarded as Chamber business; but the Judge may certify for the attendance of one Counsel in Chamber for each party in any proceeding, or may transfer any matter requiring argument to the Court list. The Judge may also certify for a fee to Counsel for perusing and settling a draft statement in cases in which the aid of Counsel may appear to it to have been necessary.

20. The Conveyance shall be under the Seal of the Court, and may be in the form in the Appendix hereto annexed, or to the like effect.

21. So far as these rules and the forms and directions in the Appendix hereto, or any rules hereafter to be made by the Privy Council in Ireland, under the authority aforesaid, may not extend, the rules, forms and directions, regulations, and procedure for the time being of the Landed Estates Court shall be observed and followed where the same may be applicable to proceedings under the second part of the Act, and shall not be at variance with the same or with these rules.

APPENDIX.

Forms and Directions.

Issued by The Privy Council in Ireland, under the authority of "The Landlord and Tenant (Ireland) Act, 1870," to be used and followed in the cases to which they are respectively applicable, but with such variations as may be required by the circumstances.

Note.—So far as these forms are not applicable, the existing forms used in proceedings in the Landed Estates Court, may be used and followed.

Form No. 1.

Agreement for Sale under Section 32 of the Act.

Memorandum of Agreement pursuant to the Landlord and Tenant (Ireland) Act, 1870, between Augustus Boyd, of &c. D.L., (the vendor), and Cornelius Dunne, of &c. (the purchaser). The vendor agrees to sell and the purchaser agrees to buy the fee-simple of the townland of Barmeen, in the parish of Newtown and Barony and county of Louth, as now in the purchaser's occupation [by virtue of a lease for, &c.] The purchase-money is to be £750, payable at such time and in such manner as the Landed

Estates Court shall direct. The tenant's rent is to be payable up to and including the gale day next before the day on which the tenant shall be declared the purchaser by the Court.

The purchaser is to take subject to an annuity of £6 8s. payable half-yearly, in respect of a loan for drainage under the Act 10 and 11 Vic., chap. 32, and Acts amending the same, which determines on the 1st of May, 1872. He is also to take subject to the tithe-rentcharge of 16s. 6d. per annum, and the Quit-rent of 26s. 6d. per annum to which these premises are liable, but with such right of indemnity or contribution (if any) as now exists, or is just in respect of said Quit-rent which is payable out of this and the adjoining townland of .

The application to the Court is to be made by the vendor alone [or by a Solicitor for vendor and purchaser jointly], to carry out the sale as aforesaid, and is to be diligently prosecuted according to the rules and directions in that behalf made.

See (4.) below. All costs and expenses properly incurred as incidental to the application to the Court to carry the sale into effect are to be borne by———

This agreement is subject to the approval of the Court; and it is to be null and void if the Court refuses to carry the sale into effect, [or if the Board of Works declines to make an advance of two-thirds or one-half as the case may be of the purchase-money for the completion thereof under the Act.]

Dated,

A. B.
C. D.

Signed in presence of }

DIRECTIONS.

The agreement for sale under Section 32 between landlord and tenant, whatever be the form in which it is drawn, should always specify clearly—

(1.) The amount and particulars of payment of purchase-money.

(2.) The period at which the tenant's rent shall cease to be payable.

(3.) Whether the application to the Court shall be made by both parties jointly, or by one of them, with the consent of the other.

(4.) How the costs of the application are to be borne unless it is intended that they shall be regulated by Rule 11.

(5.) Subject to what charges (if any) the sale is made.

(6.) If there are any deeds such as leases or the like relating to other lands than those for sale, it should be stated in whose custody they are to remain, or if any deeds proper to be handed to the purchaser are not forthcoming the fact should be stated.

(7.) If the agreement be conditional on the making of an advance by the Board of Works, this should be mentioned.

The agreement should always be prepared in duplicate (one for each party) with a sixpenny agreement stamp on each part.

By rule No. 2, any agreement for sale made pursuant to the Act is subject to the approval of the Court; and if the Court declines to sanction the sale, the agreement becomes void and inoperative for all purposes.

Form No. 2.

STATEMENT FOR CARRYING INTO EFFECT A SALE UNDER THE ACT. IN THE LANDED ESTATES COURT, IRELAND.

IN THE MATTER of the Estate of Augustus Boyd, an owner of land, and of Cornelius Dunne, a Tenant, and of the "LANDLORD AND TENANT (IRELAND) ACT, 1870."

THE STATEMENT of Augustus Boyd, of Esq., D.L., and of Cornelius Dunne, of , farmer [or either of them, as the case may be].

SHEWETH—

1. That the said Augustus Boyd is the Owner in fee-simple [or otherwise, as the case may be] of the lands of Barmeen, in the barony and county of Louth, and has been in receipt of the rents and profits thereof since the year 1828.

2. That Cornelius Dunne, of Barmeen aforesaid, farmer, is the sole Tenant of the said lands under a lease executed to him by the applicant on the 3rd day of July, 1832, for the term of two lives, viz., of the said Cornelius Dunne and of O. P., now deceased, at the yearly rent of £33 10*s.* [or otherwise as the case may be].

3. That the said Cornelius Dunne is in the actual occupation of the said lands, save acres thereof, which are in the actual occupation of X. Y., and that the said X. Y. has assented to the sale.

4. That an agreement in writing (a copy of which is annexed hereto) was made on the 15th September, 1870, for a sale of the lessor's interest in the lands to the said Cornelius Dunne for the sum of £750, payable as in said agreement stated.

5. That no further consideration for the sale aforesaid has been given or promised directly or indirectly over and above the said sum of £750.*

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* The verification of this paragraph by the applicant himself will always be requisite.

6. That the said Augustus Boyd is unmarried, and that no person is entitled to any dower or thirds out of said lands, nor is any person interested therein, or in the purchase-money thereof, under any disability; and that there is not any suit or matter depending in any court of law or equity in relation to the premises, or any part thereof, or in relation to the receipt of the rents or profits thereof.*

7. That the lands are fully described in the First Schedule, and that the incumbrances affecting the same are fully described in the Second Schedule annexed hereto.

8. That the said Augustus Boyd and Cornelius Dunne are desirous that the sale should be carried into effect by this Honorable Court in manner following, viz. :—

That a statutable conveyance may be executed by the Court to the said Cornelius Dunne of the fee simple of the said lands; and that the applicants may have such further or other aid and relief incidental to the proposed sale as the nature of the case may require, according to the judgment of the Court.†

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* As to persons under disability, and as to suits pending, the directions given by the Landed Estates Court, as regards petitions, are to be exactly followed.

† The statement should be accompanied by a copy of the agreement for the sale.

FORM No. 3.—*First Schedule to Statement.**

Description of Lands.	Contents.	Tenure.	Poor Law Valuation.	Rent paid by Tenant.	Occupation.	Outgoings.
	A. R. P. Statute measure.		£ s. d.	£ s. d.		
The Townland of Barmeen, in the Parish of Newtown, and Barony and County of Louth.	70 1 2	Fee-simple. [or as the case may be.]	29 15 0	33 10 0	C. Dunne is the sole occupier and tenant under the Lease for a life set forth in the above statement, & has been in occupation since the date of the Lease. [or as the case may be.]	Tithe-rentcharge 16s. 6d. per annum. A quit-rent of £1 6s. 9d. to the Crown is payable in respect of this and the adjoining townland of ——. An annuity of £6 8s., payable half-yearly to the Board of Public Works, in respect of a loan under stat. 10 & 11 Vic. ch. 32, and Acts amending same. This annuity determines on the 1st of May, 1874. It is to remain a charge on the lands so long as payable.

* This Schedule should be copied exactly in any application to the Board of Works for an advance of money in aid of the purchase. In an application under the 47th section of the Act for sale of an entire estate (the landlord's title being common), all the tenancies should be set out as distinct items in the First Schedule to the Statement.

Second Schedule to Statement.

No.	Date and Registration.	Name & exact address of Incumbrancer.	Particulars of Incumbrance.	Amount of Incumbrance, and Observations.	
1	1861: 2nd Feb.; registered 4th Feb. 1861.	Royal Bank of Ireland, 2, Foster-place, Dublin; Jno. North, Esq., Public Officer.	Mortgage of these and several other lands executed by the owner to secure £2,000 and interest.	Principal £2,000; no arrear of interest due. It is proposed to pay over the purchase-money in part discharge of this mortgage.	
2	1862; 5th July; registered 8th July, 1862.	Jane Smith, No. 27, Ely-place, Dublin, Widow.	Judgment obtained by her against the owner in Court of Queen's Bench in Trinity Term, 1862, and registered against the lands.	Penalty £400.	

Form No. 4.

VARIATION IN STATEMENT WHERE THE VENDOR IS HIMSELF A TENANT FOR LIFE, AND WHERE THE PURCHASE-MONEY IS TO BE PAID OVER TO TRUSTEES WHO DO NOT ACT AS VENDORS.

[Title of matter, &c., as before.]

SHEWETH—

That by the last will and testament of Sir H. Brabazon, bart., deceased, a copy of which is lodged herewith, the Brabazon Manor estate, which comprises *(inter alia)* the townland of Marlay, in the barony of Shrule, and county of Mayo, was vested in M. N. and O. P., their heirs and assigns, on trust, to pay the rents and profits thereof to the applicant, Brabazon Orme, for and during the term of his natural life, with remainder to his first and other sons in tail male, with remainders over, and that a power of sale was given to the said trustees.

That Knox Orme, the eldest son of the applicant, is the first tenant-in-tail under the aforesaid will, and is of the age of twenty-one years and upwards, and is now resident at University College, in the city of Oxford.

That the said trustees are living, and are now resident as follow:—M. N. at , post town , in the county of , and O. P. at , post-town , in the county of .

[Paragraphs as to disability and consideration for sale must be inserted in every case.]

That the said Trustees have never acted on the power of sale so conferred on them, and have declined to enter into any agreement for sale; [but are willing to receive any sum of purchase-money which this Honorable Court may pay over to them on the trusts of the aforesaid will.]

[State the occupation of the lands and agreement for sale.]

That the applicant B. Orme, as tenant for life within the meaning of the Act, is desirous that the proposed sale should be carried into effect by this Honorable Court in manner following, viz.:—

That a statutable conveyance may be executed by the Court to the said [tenant] of the fee-simple of his holding in the said townland, and that the Court may give such further or other aid and relief incidental to the proposed sale, as the nature of the case may require, according to the judgment of the Court.

Sch. 1. Description of lands, as before.

Sch. 2. Particulars of incumbrances (if any) as before.

Form No. 5.

Variations where the Vendors are Trustees for Sale, and where the Land is held (together with other Lands not sold) under a Lease or Grant.

[Title of the matter, etc., as before.]

[State the facts concisely, and especially the instrument creating the trust for sale, also state the name and address of the person now beneficially interested, and of the next remainder-man.

State very shortly the lease and last renewal or grant under which these with other specified lands are held.

State the other material facts, agreement for sale, statement as to disability, and no further consideration, etc., etc., and conclude as follows :—]

That the said [Trustees for sale] are desirous that the sale [or sales] may be carried into effect pursuant to the Act by this Honorable Court in manner following, viz. :—

That a statutable conveyance of the holding may be made to [tenant] for the residue of the term [or as the case may be], and that the Court may give such aid and relief incidental to the proposed sale, as the nature of the case may require, according to the judgment of the Court.

[Schedules as before.]

Directions.

Where any previous statement has been lodged, and sale carried out under the same title, or where the title has been in any other proceeding investigated and approved by the Court, it will be sufficient to refer to it without stating the owner's title over again.

In less simple cases it will be useful on drawing the statement to refer to the forms of petition, and to make use of some of the paragraphs therein which will be found annexed to the rules of the Landed Estates Court.

FORM NO. 6.

NOTICE OF APPLICATION TO CARRY INTO EFFECT A SALE UNDER PART 2 OF THE ACT.

The Landlord and Tenant (Ireland) Act, 1870.

LANDED ESTATES COURT.

In the matter of Augustus Boyd, D.L., an owner of Land, and of Cornelius Dunne, a Tenant, and of the Landlord and Tenant (Ireland) Act, 1870.

Take notice that on the day of I will apply to the Court to declare the purchaser of the lands of situate, etc., and containing A. R. P. statute measure, as now held by the said for the term of , at the annual rent of £ and valued at £ by the Tenement Valuation of Ireland, for the sum of £ , and that you are at liberty to attend and object.

FORM NO. 7.

CONVEYANCE TO A PURCHASING TENANT UNDER SECOND PART OF THE ACT.

Pursuant to the "Landlord and Tenant (Ireland) Act, 1870," I, D. L., a Judge of the Landed Estates Court, Ireland, in consideration of the sum of £750 paid (as set forth in the Certificate hereto) into the Bank of Ireland, to the account of the said Court and to the credit of the matter of A. Boyd, an owner of land, and of Cornelius Dunne, a tenant, and of the said Act, DO GRANT unto the said Cornelius Dunne the townland of Barmeen, in the barony and county of Louth, containing 70A. 1R. 2P. statute measure or thereabouts, and described in the annexed Map, with the appurtenances. To HOLD the same unto the said Cornelius Dunne, his heirs and assigns, for ever, SUBJECT to

[*Specify here any charge in respect of drainage advances, or advances by the Board of Works for purchase-money, or any other charge required to be specified by the 36th sec. of the Act.*]

In witness whereof, &c.

Signature (L. S.)

[The example given above is that of an ordinary fee-simple. If the property be leasehold or fee-farm this form will require variation, and it will be necessary to recite or refer to the instrument in the manner directed by the usual forms of the court.]

FORM No. 8.

Certificate of payment at foot of Conveyance.

I CERTIFY that the above mentioned sum of £750 was paid into the Bank of Ireland as follows, viz., £250 by the said C. Dunne on the 5th of February, 1871, and £500 being an advance by the Board of Public Works, on the 12th of February, 1871.

[Printed forms of applications for advances under the Act may be obtained at the Office of the Board of Works.]

The foregoing Rules, with Appendix of Forms and Directions, were approved of by Order of the Privy Council, dated 29th November, 1870.

R. N. MATHESON,
Clerk of the Council.

ADDITIONAL ACTS.

LANDLORD AND TENANT (IRELAND) AMENDMENT ACT, 1871.

34 & 35 VICT., CAP. 92.

An Act to amend the Landlord and Tenant (Ireland) Act, 1870. [21st August, 1871.]

WHEREAS doubts have been entertained whether rights secured by the Landlord and Tenant (Ireland) Act, 1870, to tenants in Ireland, may not be endangered by the omission to specify or refer to such rights in conveyances, assignments, and declarations of title executed after the passing of the said Act by the Judges of the Landed Estates Court in Ireland:

Be it declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Saving certain rights of tenants under Act 33 and 34 Vict. cap. 46.

1. In every case in which a sale, conveyance, or declaration of title has been or shall be made, under the provisions of the Act twenty-first and twenty-second Victoria, chapter seventy-two, intituled, "An Act to facilitate the sale and transfer of Land in Ireland," subject to any tenancy, the tenant and those claiming under him shall have all rights which are declared to be legal, or to which he or they is or are or may become entitled in respect of such tenancy under the first part of the Landlord and Tenant (Ireland) Act, 1870, and the sale, conveyance, or declaration shall be subject to all such rights, although such rights may not be specified or referred to in the conveyance or assignment executed or declaration signed by the Judge of the Landed Estates Court; and the word "tenant," shall in this Act have the same meaning as that assigned to it in section seventy of the Landlord and Tenant (Ireland) Act, 1870. Nothing in this Act contained shall in any manner impair or affect the provisions of "The Landlord and Tenant (Ireland) Act, 1870."

Landlord and Tenant (Ireland) Act, 1872.

35 & 36 VICT., CAP. 32.

An Act to explain and amend the Landlord and Tenant (Ireland) Act, 1870, so far as relates to the Purchase by Tenants of their Holdings. [18th July, 1872.]

WHEREAS it is expedient to amend the Landlord and Tenant (Ireland) Act, 1870, in this Act called "the principal Act," so far as relates to the purchase by tenants of their holdings:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The following regulations shall be enacted with respect to purchases of their holdings by tenants:

Regulations with respect to purchase of their holdings by tenants.

(1.) Every application under the principal Act made by a tenant to the Board for an advance for the purchase of his holding may be made before or after such tenant has entered into any agreement for the purchase or has been declared the purchaser of the holding in respect of which such advance is required, and the Board may agree to advance to such tenant any sum not exceeding two third parts of the value of such holding, as assessed by the Board:

(2.) Where any sale of his holding is made to a tenant in pursuance of the principal Act, by or through the medium of the Landed Estates Court, that Court, and not the Civil Bill Court, shall have power to charge the annuity authorized to be charged by the principal Act, in favour of the Board, in respect of advances by the Board; and the forty-fourth and forty-seventh sections of the principal Act shall be amended accordingly by the substitution therein of the expression "Landed Estates Court" for the expression "Civil Bill Court."

(3.) Notwithstanding the sale to a tenant by his landlord of his holding may not have been made in or through the medium of the Landed Estates Court, the Board may, if satisfied of the value of the security, agree to advance to such tenant for the purpose of purchasing his holding, any sum not exceeding two-third parts of the value of such

holding, as assessed by the Board, and may take as security for the repayment of such advance a charge on such holding of an annuity of the same duration and amount as would have been charged thereon if the sale had been made in the Landed Estates Court; but no such advance shall be actually paid to the tenant until the Board are satisfied with the title of the tenant, and have taken from him a charge on the holding in such form and with such powers of sale and covenants for payment as the Board may be advised will effectually secure the annuity charged in their favour, and with the like powers for the recovery of such annuity as are contained in the principal Act in respect to the recovery of annuities under the said Act:

(4.) If while any holding is charged with the payment of an annuity to the Board under the principal Act and this Act, any part of such holding is let to agricultural labourers *bona fide* required for the cultivation of such holding, for cottages or gardens not exceeding half an acre in each case, such letting shall not be deemed to be nor shall the same be a cause of forfeiture.

In certain cases where advances made for purchase of a holding, notwithstanding forfeiture, Board may proceed to a sale.

2. In every case in which an advance shall be made after the passing of this Act for the purchase of a holding under the provisions of this or the principal Act, notwithstanding the provisions as to forfeiture in the said principal Act contained, the Board shall have power to sell the holding or any part thereof, and to convey the same to a purchaser, in the event of such holding, or any part thereof, having been alienated, assigned, subdivided or sublet without the consent of the Board while any portion of the annuity remained unpaid; and the Board may sell the said holding or any part thereof, by public auction, due notice being given by the Board of the time, place, terms, and conditions of such sale; and the Board shall apply the proceeds derived from such sale in the first instance to the payment of all moneys due on foot of such annuity, and in redemption of so much of the said annuity as shall at the time of such sale remain charged on said holding, and of all costs and expenses incurred by the said Board in relation to such sale, or otherwise in respect of such holding, and shall pay the balance to the person entitled by law to receive the same.

Short title and construction of Act.

3. This Act shall be construed as one with the principal Act, and may be cited for all purposes as The Landlord and Tenant (Ireland) Act, 1872.

FORMS OF THE BOARD OF WORKS.

The Landlord and Tenant (Ireland) Act, 1870.

APPLICATION BY A LANDLORD FOR AN ADVANCE TO DISCHARGE TENANT'S CLAIM FOR COMPENSATION. (SECTION 42).

TO THE COMMISSIONERS OF PUBLIC WORKS IN IRELAND.

The memorial of the undersigned

SHEWETH—

That the sum of £ has been ascertained to be due, in respect of compensation under the above-mentioned Act, to of (late) tenant of memorialist, in occupation of the holding mentioned in the schedule hereto annexed, part of memorialist's estate, such holding being also shown on the accompanying ordnance sheet. [Annex ordnance sheet].

That the claim aforesaid arose out of the following mentioned works viz :—[Describe the works] and more fully stated and set forth in the accompanying [State whether order of the Civil Bill Court or award of an Arbitration Court, and annex copy order or award. If the compensation has been agreed upon without a dispute, state the fact, and annex copy of the agreement].

That said tenant is quitting his holding (or has quitted), but has not been disturbed by memorialist; and memorialist now applies for an advance to said tenant, on memorialist's behalf, of the sum of £ , or of so much of the said sum, so due, as the Commissioners may think expedient to advance, memorialist undertaking to pay to the said tenant the difference, if any, between the sum advanced and the sum so due, as aforesaid; and upon such advance being made by the Board, such holding shall be deemed to be charged with an annuity of £5 for every hundred pounds of such advance, and so in proportion for any less sum, for a period of thirty-five years, pursuant to the provisions of the said Act.

That memorialist's estate and interest in the said lands is as follows :—[The landlord's title must be fully set forth. If a limited owner it must be shown that the estate comes within the designation given in Sec. 26].

Dated this day of 187

Signature of Landlord.
Residence.
Post Town.

Tenant's Name. Townland, Barony, and County.	Contents, Statute Measure.	Poor Law Valuation.	Tenant's Rent.	Outgoings.
	A. R. P.	£ s. d.	£ s. d.	Rentcharges in lieu of Tithes, £ Quit Rent, £ Rentcharge payable in respect of Advances of Public Moneys for Land Improvement or Drainage, £ Fee Farm or any Head or other Rent, £ Total, £

The following is the 26th section of the Landlord and Tenant (Ireland) Act, 1870 :—

The expression "Limited owner" shall in this Act mean as follows :—

1. Any person entitled under any existing or future settlement at law or in equity, for his own benefit and for the term of his own life to the possession or receipt of the rents or profits of land, whether subject or not to incumbrances, in which the estate for the time, being subject to the trusts of a settlement, is an estate for lives or years renewable for ever, or is an estate renewable for a term of not less than sixty years, or is an estate for a term of years of which not less than sixty are unexpired, or is a greater estate than any of the foregoing estates.

2. Any body corporate, any corporation sole, ecclesiastical or lay, any trustees for charities, and any commissioners or trustees for ecclesiastical, collegiate, or other public purposes, entitled at law or in equity, in the case of freehold land, to an estate in fee-simple or in fee-farm, and in the case of

leasehold land, to a lease for an unexpired residue of not less than thirty-one years, or for a term of years or of lives renewable for ever, or renewable for a period of not less than thirty-one years.

The Landlord and Tenant (Ireland) Act, 1870.

ADVANCE TO A LANDLORD TO RECLAIM WASTE LANDS.
(SECTION 43.)

TO THE COMMISSIONERS OF PUBLIC WORKS IN IRELAND.

The memorial of the undersigned

SHEWETH—

That your memorialist is landlord of the lands of being now waste lands, containing acres roods, and perches, statute measure, situate in the barony of and county of which he desires to reclaim in the manner stated in the accompanying report, plan, estimate, and specification [report, etc., to accompany memorial], which your memorialist prays may be respectively considered as part of this his memorial; and said lands are shewn on annexed ordnance sheet. [Annex ordnance sheet.]

That said waste lands are in the tenancy and occupation of the several tenants whose names are set forth, and who hold the several quantities of said lands in their possession, at the rents severally set opposite their names in the schedule annexed hereto, and said tenants have consented to the proposed reclamation of said waste lands. [If the lands proposed to be reclaimed are in the owner's possession, this paragraph must be altered according to the fact.]

That the expense of effecting such reclaimation is estimated at the sum of £ sterling, and that the estimated increase in the annual value expected to arise to said waste lands amounts to £ as set forth in said annexed report.

That in addition to the security afforded by said waste lands, memorialist proposes as a security the following mentioned lands, viz.:—

containing acres, roods, and perches, statute measure, situate in the barony of and county of

That your memorialist's estate and interest in all said lands

are as follows, viz. :— [State whether owner in fee-simple, in tail, for life, or under lease, or otherwise.]

That the only sums annually chargeable on said lands, under the various heads described, are as follows, viz :—

For quit rent, - - - - - - -	£
For head rent and other charges incident to the tenure, - - - - - -	£
For rent charges in lieu of tithes, - -	£
For advances of public money for land improvement or drainage, - - -	£
For any fee-farm or other rent, - - -	£
Total,	£

That memorialist now applies for the sum of £ or such sum as the Commissioners may think fit to advance, to enable him to reclaim said waste lands; and upon such advance being made by the Board, all the said lands shall be deemed to be charged with an annuity of £5 for every hundred pounds of such advance, and so in proportion for any less sum, for a period of thirty-five years, pursuant to the provisions of the said Act.

Dated this day of 187

Signature of Landlord.
Residence.
Post Town.

SCHEDULE REFERRED TO.

Containing Particulars of the Tenancies (if any) on the Waste Lands proposed to be Reclaimed.

Tenants' Names.	Townlands.	Contents, Statute Measure.	Yearly Rent.	Tenants' Tenure.
		A. R. P.	£ s. d.	

The Landlord and Tenant (Ireland) Act, 1870.

ADVANCE UPON THE JOINT SECURITY OF A VENDOR AND OF A PURCHASER OF A SUM NOT EXCEEDING A MOIETY OF THE PURCHASE MONEY OF WASTE LANDS. (SECTION 43.)

TO THE COMMISSIONERS OF PUBLIC WORKS IN IRELAND.

The memorial of the undersigned vendor and purchaser respectively of waste land,

SHEWETH—

That your memorialist, the vendor, is landlord of the lands of being now waste lands, containing acres, roods, and perches, statute measure, situate in the barony of and county of and has contracted with your memorialist, the purchaser, for the sale thereof for the sum of £ and said lands are shown on the annexed ordnance sheet.

That the estate and interest of your memorialist, the vendor, as landlord of said waste lands are as follow :—[State whether owner in fee-simple, in tail, for life, or under lease, or otherwise.]

That the only sums annually chargeable on said waste lands, under the various heads described, are as follows, viz. :—

For quit-rent - - - -	£
For head-rent and other charges incident to the tenure - - -	£
For rent-charges in lieu of tithes - -	£
For advances of public money, for land improvement or drainage -	£
For any fee-farm or other rent - -	£
Total, -	£

That both your said memorialists now apply for the sum of £ which does not exceed a moiety of the purchase money as aforesaid contracted to be paid, and they propose as security for such advance the said waste lands, and also the lands and premises described in the annexed ordnance sheet, and which are as follow, that is to say, the lands called [State names of lands, contents, barony and county, which the purchaser proposes to include in the security], containing acres, roods, and perches, statute measure, situate in the barony of county of and valued under the acts relating to the

valuation of rateable property in Ireland at the annual sum of £ .

That upon such advance being made by the Board, all the said lands shall be deemed to be charged with an annuity of £5 for every hundred pounds of such advance, and so in proportion for any less sum, for a period of thirty-five years, pursuant to the provisions of said Act.

That the estate and interest of your memorialist, the purchaser, in the said lands and premises offered as further security as aforesaid, are as follows, viz. : [State whether owner in fee, in tail, for life, or under lease, or otherwise.]

That the only sums annually chargeable on said last-mentioned lands, under the various heads described, are as follows, viz. :—

For quit-rent - - - -	£
For head-rent and other charges incident to the tenure - - -	£
For rent-charge in lieu of tithes - -	£
For advances of public money for land improvement or drainage -	£
For any fee-farm or other rent - -	£
Total, -	£

Dated this day of 187 .

Signature of Vendor.
Residence.
Post Town.
Signature of Purchaser.
Residence.
Post Town.

The Landlord and Tenant (Ireland) Act, 1870.

APPLICATION BY A TENANT WHO, PURSUANT TO SECTION 32, HAS AGREED WITH HIS LANDLORD TO PURCHASE, AND UNDER SECTION 44 SEEKS AN ADVANCE FROM THE BOARD.

TO THE COMMISSIONERS OF PUBLIC WORKS IN IRELAND.

The memorial of the undersigned

SHEWETH—

That the Landed Estates Court has been pleased to approve that a certain agreement, dated the day of

18 for sale at the price or sum of £ in the matter of the estate of an owner, and of [Title to be fully given] (memorialist), a tenant, and of the above-mentioned Act, shall be carried into effect, as appears by an order of the said Court, dated the day of 18 [Annex copy of Landed Estates Court order].

That said agreement relates to the holding mentioned in the Schedule hereto annexed, and also shown on the accompanying ordnance sheet.

That the owner aforesaid has an estate in [Here state the nature of the owner's title within some of the descriptions referred to in the 33rd section of the Act.]

That memorialist's interest in said holding consists of [State the nature of the tenancy and the yearly rent].

That memorialist now applies for the sum of £ [Not exceeding two-thirds of purchase money] as an advance for the purpose of purchasing his said holding; and upon such advance being made by the Board, the said holding shall be deemed to be charged with an annuity of £5 for every hundred pounds of such advance, and so in porportion for any less sum, for a period of thirty-five years, pursuant to the provisions of the said Act.

Dated this day of 187

Signature of Tenant.
Residence.
Post Town.

Landlord and Tenant Act, 1870.

I, do hereby certify that is the tenant in actual occupation of the holding referred to in his memorial, dated day of 187 , and that there are no under-tenants thereon except [If any, state their names, tenure, and the quantity of land held by each.]

Dated this day of 1871.

Signature of Landlord, Agent, or Receiver.
Address,
Post Town,

SCHEDULE REFERRED TO.

Description of Land.	Contents, Statute Measure.	Poor Law Valuation.	Tenants' Rent.	Outgoings.
	A. R. P.	£ s. d.	£ s. d.	
Name of Townland				Rentcharge in lieu of Tithes, £
				Quit Rent, £
Parish of				Rentcharge payable in respect of Advances of Public Moneys for Land Improvement or Drainage, £
Barony of				Fee Farm or any Head or other Rent, £
County of				Total, £

The Landlord and Tenant (Ireland) Acts, 1870 *and* 1872.

APPLICATION BY A TENANT WHO, PURSUANT TO SECTION 32, HAS AGREED WITH HIS LANDLORD TO PURCHASE, AND, UNDER SECTION 44, SEEKS AN ADVANCE FROM THE BOARD.

TO THE COMMISSIONERS OF PUBLIC WORKS IN IRELAND.

The memorial of the undersigned

SHEWETH—

That memorialist and his landlord, have entered into an agreement [Annex copy agreement], dated the day of 18 for the sale to memorialist of his holding, as set forth in the first schedule hereto, for the sum of £

That memorialist is tenant in occupation of said holding, and there is not any other person in occupation of any part thereof, save as mentioned in the schedule hereto; and memorialist's interest in said holding is as follows, viz.:— [State the nature of the tenancy and the duration of the term].

That the landlord aforesaid has an estate in [State the nature of the owner's title].

That memorialist now applies for a sum of £ [Not ex-

ceeding two-thirds of purchase money], as an advance, for the purpose of purchasing his said holding; and hereby undertakes to execute all such deeds and assurances as may be required, and to charge the said holding with an annuity of £5 for every hundred pounds of such advance, and so in proportion for any less sum, for a period of thirty-five years, pursuant to the provisions of the said Acts.

Dated this day of 187

Signature of Tenant.
Residence.
Post Town.

FIRST SCHEDULE REFERRED TO.

Description of Lands.	Contents, Statute Measure.	Tenants' Rent.	Poor Law Valuation.	Outgoings.
	A. R. P.	£ s. d.	£ s. d.	
Name of Townland				Rentcharge in lieu of Tithes, £ Quit Rent, £ Rentcharge payable in respect of Advances of Public Moneys for Land Improvement or Drainage, £ Fee Farm or any Head or other Rent, £ Total, £
Parish of				
Barony of				
County of				

SECOND SCHEDULE REFERRED TO.

Names of Persons in occupation besides Memorialist.	Contents, Statute Measure.	Sum, if any, payable by the Occupier.	Tenure.
	A. R. P.	WKLY. MTHLY. YEARLY.	

The Landlord and Tenant (Ireland) Acts, 1870 *and* 1872.

APPLICATION FOR AN ADVANCE TO A TENANT DESIROUS TO PURCHASE HIS HOLDING, FOR SALE IN THE LANDED ESTATES COURT. (SECTION 45).

TO THE COMMISSIONERS OF PUBLIC WORKS IN IRELAND.

The memorial of the undersigned

SHEWETH—

That an absolute order has been made by the Landed Estates Court in the matter of the estate of for sale of the said owner's estate in certain lands situate in the county of

That memorialist is tenant in occupation of a holding forming part of said estate, as set forth in the first schedule hereto, and in the page of the accompanying rental of the said estate, to which memorialist begs leave to refer.

That there are no under-tenants on such holding, and there is not any person in the occupation of any part thereof, save memorialist and the persons set forth in the second schedule hereto.

That memorialist now applies for a sum of £ , or such other sum, not exceeding two-thirds of the amount at which at the sale of his said holding he may be declared the purchaser; and prays that the Commissioners may be pleased to agree to make such advance to memorialist, in the event of his being so declared: memorialist being willing and hereby undertaking in the first instance to pay such part of the purchase money as may not be provided for by such advance.

That upon such advance being made by the Board, such holding shall be deemed to be charged with an annuity of £5 for every hundred pounds of such advance, and so in proportion for any less sum, for a period of thirty-five years, pursuant to the provisions of the said Act, 1870.

Dated this day of 187

Signature of Tenant.
Residence.
Post Town.

FIRST SCHEDULE REFERRED TO.

Townland, Barony, and County.	Contents, Statute Measure.	Tenants' Rent.	Poor Law Valuation.	Observations.
	A. R. P.	£ s. d.	£. s. d.	

SECOND SCHEDULE REFERRED TO.

Names of Persons in occupation besides Memorialist.	Contents, Statute Measure.	Sum, if any, payable by the Occupier.	Tenure.
	A. R. P.	WKLY. MTHLY. YEARLY.	

The Landlord and Tenant (Ireland) Act, 1870.

APPLICATION FOR AN ADVANCE TO A TENANT WHO HAS BEEN DECLARED THE PURCHASER OF HIS HOLDING IN THE LANDED ESTATES COURT. (SECTION 45.)

TO THE COMMISSIONERS OF PUBLIC WORKS IN IRELAND.

The memorial of the undersigned

SHEWETH—

That an absolute order was made by the Landed Estates Court in the matter of the estate of for sale of the said owner's estate in certain lands, situate in the county of .

That at the date of said sale memorialist was tenant in occupation of a holding forming part of said estate, as set forth in the schedule hereto and in the page of the accompanying rental of the said estate, to which memorialist begs leave to refer.

That the said holding was sold on the of and memorialist having bid the sum of £ was declared the purchaser, as appears by the certificate hereunto annexed.

The memorialist now applies for the sum of £ being two-thirds of the purchase money, or such lesser sum as the Commissioners may be pleased to advance; memorialist being willing, and hereby undertaking, to pay the remaining one-third, or such other part of the purchase money as may not be provided for by such advance.

That upon such advance being made by the Board, such holding shall be deemed to be charged with an annuity of £5 for every hundred pounds of such advance, and so in proportion for any less sum, for a period of thirty-five years, pursuant to the provisions of the said Act.

Dated this day of 187 .

Signature of Tenant.
Residence.
Post Town.

SCHEDULE REFERRED TO.

Townland	Contents Statute Measure.	Poor Law Valuation.	Rent.	Landlord's Tenure.	Tenant's Tenure.
	A. R. P.	£ s. d.	£ s. d.		

The Landlord and Tenant (Ireland) Act, 1870.

APPLICATION OF AN INTENDING PURCHASER, FOR THE PURPOSE OF PURCHASING THE RESIDUE OF AN ESTATE, FOUR-FIFTHS OF WHICH ARE BEING PURCHASED BY THE TENANTS. (SECTION 47.)

TO THE COMMISSIONERS OF PUBLIC WORKS IN IRELAND.

The memorial of the undersigned

SHEWETH—

That the Landed Estates Court has been pleased to approve in the matter of the estate of and of tenants, and your memorialist, of a certain agreement, dated the day of 18 , for the sale by as landlord of his estate, of the lands and premises mentioned in the schedule hereto annexed, and also shewn in the accompanying ordnance sheet [Annex ordnance sheet], four-fifths in value of the said estate [The proportion must not be less than here stated]

having been agreed to be purchased by the tenants thereof respectively, and your memorialist having agreed thereby to purchase the residue of the said estate; and memorialist refers to a copy of the Landed Estates Court order hereunto annexed.

That the landlord aforesaid has an estate in [Here state the nature of the landlord's title, within some of the descriptions referred to in the 33rd section of the Act].

That the purchase money agreed to be paid by your memorialist for the residue of said estate is the sum of £ of which your memorialist now seeks an advance of £ [Not exceeding one-half] to enable him to complete his purchase, to be secured upon the said residue of the estate; and upon such advance being made by the Board, the said residue of the estate shall be deemed to be charged with an annuity of £5 for every hundred pounds of such advance, and so in proportion for any less sum, for a period of thirty-five years, pursuant to the provisions of the said Act.

Dated this day of 187

Signature of Applicant.
Residence.
Post Town.

SCHEDULE REFERRED TO.

Townlands.	Contents, Statute Measure.	Poor Law Valuation.	Tenants' Rents.	Outgoings.
	A. R. P.	£ s. d.	£ s. d.	Rentcharge in lieu of Tithes, £ Quit Rent, £ Rentcharge payable in respect of Advances of Public Moneys for Land Improvement or Drainage, £ Fee Farm or any Head or other Rent, £ Total, £

APPLICATION FOR IMPROVEMENT LOAN.

10 Vic., c. 32; 12 Vic., c. 23; 12 and 13 Vic., c. 59; 13 and 14 Vic., c. 31; 13 and 14 Vic., c. 113; 15 and 16 Vic., c. 34; and 23 Vic., c. 19.

TO THE COMMISSIONERS OF PUBLIC WORKS IN IRELAND.

The memorial of the undersigned

SHEWETH—

That your memorialist is, within the meaning of an Act passed in the tenth year of the reign of her Majesty, Queen Victoria, intituled "An Act to facilitate the improvement of landed property in Ireland," owner of the lands mentioned in the schedule hereunto annexed.

That your memorialist proposes to increase the value of the said lands, by [Here state the proposed works] as mentioned in, or to be inferred from the annexed report, plan, estimate, and specification, which your memorialist prays may be respectively considered as part of this his memorial.

That he is desirous of obtaining a loan for that purpose, to be secured by a rent-charge on the lands mentioned in the said schedule, under the provisions of the above-mentioned Act.

That the present annual value of the lands is the sum of pounds, and the quit rent (*s*) and rent-charge (*s*) in lieu of tithes now charged upon the same lands amount together to the annual sum of pounds, as more particularly set forth in the said schedule.

That the expense of effecting such in manner aforesaid, is estimated at the sum of pounds sterling, as more particularly mentioned and set forth in the estimate annexed; and that the estimated increase in the annual value expected to arise to the said lands in said schedule, the subject of such proposed improvements, amounts to pounds, as set forth in the annexed report.

And this memorialist further states and specifies, that his estate and interest in the said lands and premises are as follows: [State what estate or interest the memorialist has in the lands, and the particulars of the title by which the memorialist is constituted an owner within the meaning of the Act, having regard to the provisions of the Act. Also state whether the whole of said lands is held under one and the same interest or title, and what extent is held thereby, and if under different interests or titles, how much under each.]

And this memorialist now applies and asks for the sum of pounds, by way of loan, under the provisions of the said Act, for defraying the expense of the proposed works, with such alterations and modifications as the Commissioners of Public Works may approve of.

Dated at this day of 187

Witness of signature of owner,
Occupation,
Residence,
Post Town,

Signature of owner,
Residence,
Post Town,

SCHEDULE.

Owner.	Occupier.	Townland, with the Denomination or reputed Name or Names by which the Lands are known	Barony.	County.	Probable Quantity of Land comprised in Townland or Townlands whereof Memorialist is Owner.	Quit Rents.	Rent charge in lieu of Tithes.
					A. R. P.	£ s. d.	£ s. d.

I, do hereby certify and declare, that there is no person who has any estate or interest derived under me, or under any person through whom I claim, in the lands in respect of which I have applied for a loan by the annexed memorial for the term of his or her own life, or the life of any other person or persons, not reserving rent, or for any term of years or lives renewable in any manner, or for a term of years whereof 40 years are unexpired at the day of the date of the said memorial, and that I am the person first entitled to apply for such loan, as owner of said lands.

Signed,

Witness present,

FORM OF UNDERTAKING TO PAY EXPENSE OF REPORT AND INVESTIGATION.

Landed Property Improvement Act,

10th VICT., CAP. 32.

I of in the county of the person making application to the Commissioners of Public Works in Ireland for a loan under the provisions of an Act passed in the tenth year of the reign of her Majesty Queen Victoria [10th Vict., cap. 92], entitled, "An Act to facilitate the Improvement of Landed Property in Ireland," do hereby promise and undertake to pay to the said Commissioners of Public Works in Ireland, the amount of all the expense that may be incurred by them in obtaining a report upon and investigating the subject of such my application, including all expenses consequent upon such investigation.

Given under my hand this day of 187

Signature of owner,
Residence,
Post Town,

Witness present,
Name,
Residence,
Post Town,

LAND IMPROVEMENT ACT.

I, , an applicant for a loan to the Commissioners of Public Works in Ireland, under the provisions of the above Act, do hereby propose—

Name,
Occupation or calling,
Residence,
County,
Post Town,

as surety, to join me in the necessary bond for the due application of such sum as the Lords Commissioners of Her Majesty's Treasury may be pleased to sanction in respect of such application.

Name of applicant,
Residence,
County in which resident,
Post Town,

CASES UNDER THE LAND ACT.

The letters Q. S. mean Quarter Sessions; the letter A. means Assizes.

SECTION I.

THE ULSTER TENANT-RIGHT CUSTOM.

(See Equities Section, p. cxi; Town Parks, p. cx; Practice, p. cxiii.)

Effect of a conveyance by the Landed Estates Court on the Ulster tenant-right custom discussed, In re Estate of the Marquis of Waterford.—Irish Reports, Equity, vol. 5, p. 59; S. C. on Appeal, 434.—(See now 34 and 35 Vict., cap. 92.)

It is competent for a tenant to claim in the alternative, under the Ulster tenant-right custom, or under the 3rd and 4th sections, and he is not bound to elect in the first instance under which portion of the Act he will proceed.—Q. S., Fegan v. Waring, 5 Ir. L. T. 39; and Murray v. McKimmen, ib. 116.

The tenant may serve a dual claim under the Ulster custom, and in the alternative under secs. 3 and 4, and he will not be called on to elect until the case is heard.—Q. S., Thompson v. Trustees of the Earl of Kilmorey, 5 Ir. L. T. 117.

A claimant must elect, at the outset of his case, whether he will proceed with his claim under the Ulster custom or under the 3rd and 4th sections of the Act.—Q. S., McComiskey v. Carter, 6 Ir. L. T. 15.

A tenant against whom an ejectment decree was obtained in March, 1870, against which he appealed, and who was allowed, in order to get his crops, to remain in possession until after the Act came in force, and who had been sued for use and occupation at the present sessions, is not entitled to claim under the Ulster custom.—Q. S., M'Ilhatton v. Montgomery, 5 Ir. L. T. 73.

To entitle a claimant to the benefit of the Ulster tenant-right custom, it is not necessary that he should have been legally a tenant at the time of the passing of the said Act, 1870, where he has been allowed to remain in possession until after the 1st August, 1870.—A., Lord Charlemont v. Devlin, 5 Ir. L. T. 160.

The general custom of the neighbourhood will afford *prima facie* evidence, unless it is clearly proved that the holding was

taken subject to a more restricted principle of estimating value of Ulster tenant-right.—Q. S., Wright v. Parker, 5 Ir. L. T. 87.

Evidence of the prevalence of the custom on surrounding estates is admissible to prove the custom to which a holding is subject; but this evidence may be rebutted by showing an estate usage different from the usage of the district.—Q. S., Austin v. Scott, 5 Ir. L. T. 172.

A lease was granted, dated 1st April, 1794, for two lives or 31 years. It expired in 1871. It was proved that a custom for the unrestrained sale of the good-will of the occupying tenant existed in the surrounding districts and estates; but it was also proved that on the particular estate a restricted tenant-right, about and not exceeding five years' purchase, had been introduced and acted on since 1848. Point reserved whether the restricted custom should prevail.—A., Austin v. Scott, 5 Ir. L. T. 173.

A claim for the Ulster tenant-right prevalent in the district, is not excluded by an agreement not to claim for improvements made after a fixed date.—Q. S., Stewart v. Hart, 5 Ir. L. T. 87.

The custom extends to town-parks.—Q. S., McGaughey v. Stewart, 5 Ir. L. T. 146.

It is unnecessary that the landlord should approve of the proposed incoming tenant, if the Court thinks that there is no reasonable ground for objecting to him.

A conveyance from the Landed Estates Court does not discharge the purchaser from the custom as legalised by the Act.

Semble.—Bad cultivation by the tenant should be taken into consideration in estimating the value of his interest.—A., Patton v. Johnston, 5 Ir. L. T. 101, S. C. A. ib. 159.

Lease dated 17th July, 1808, for three lives and 31 years, expired. General evidence of sale of yearly tenancies on adjoining properties held not sufficient to establish a customary claim on the expiration of the lease.—Q. S., Allison v. Mansfield, 6 Ir. L. T. 37.

The Ulster custom attaches to leasehold interests. Where the estate is small, the district usage will prevail.—Nelson v. Caldwell, Q. S., 5 Ir. L. T. 116.

The ordinary clause in a lease to keep improvements in repair, and to surrender the same at the expiration of the lease, does not destroy the tenant's claim under the Ulster tenant-right custom. —A., Austin v. Scott, 5 Ir. L. T. 173 (reversing the decision at Q. S., S. C. ib. 172).

Tenant evicted on expiration of a lease, held that the custom was proved to apply to the holding. The estate-custom proved being that only five years' rent was allowed unless the tenant had made considerable improvements. Held that the tenant's claims

could not exceed that limit.—Q. S., Weir v. Knox, 6 Ir. L. T. 38.

An agreement in writing to give up possession is not inconsistent with the Ulster custom.—Q. S., Stewart v. Hart, 5 Ir. L. T. 88.

Where tenant-right had existed on the estate previous to and up to the time when the present landlord as remainderman, came into possession in 1854; and the claimant had bought a portion of his yearly holding, with the knowledge and consent of the agent, of the tenant for life, and tenant-right was proved to exist in the surrounding estates, the claimant's holding was held to be subject to the custom, although the present landlord had always refused to allow tenant-right on his estates.—A., Lord Leitrim v. Friel, 6 Ir. L. T. 86, affirming the decision at Q. S., 5 Ir. L. T. 187.

Semble.—A tenant is entitled to compensation under the Ulster tenant-right usages, on leaving his holding voluntarily, if the landlord refuses him permission to dispose of his holding to a proper tenant.—Q. S., Dickey v. Dickey, 6 Ir. L. T. 87.

A reasonable increase in the rent is not inconsistent with the Ulster tenant-right. But when the landlord insists upon a higher increase than is reasonable, the tenant is entitled to compensation. The right to an increase of rent under the custom depends on the intrinsic value of the land, irrespective of the value of improvements effected by the tenant.—Q. S., Carraher v. Bond, 6 Ir. L. T. 19.

The consent of the landlord to the subdivision by the tenant of his holding, is an essential incident of the Ulster tenant-right custom.—A., Armstrong v. Ellis, 6 Ir. L. T. 63.

Sub-letting without the express consent of the landlord is inconsistent with the Ulster usages, and disentitles a tenant to compensation uuder them.

Strict evidence will be required of the landlord's consent, which will not be inferred from ambiguous acts.—Q. S., Shaw v. Ward, 6 Ir. L. T. 87.

Value of Ulster tenant-right considered.—Wright v. Parker, 5 Ir. L. T. 87; and Stewart v. Hart, ib. 88.

Section III.

COMPENSATION FOR DISTURBANCE.

(See Equities Section, p. cxi.)

Ejectment on the title on expiration of a lease was commenced before the 1st August, 1870, but the trial did not take place until after that date, when a verdict was had for the plaintiff, find-

ing title for him from a day anterior to the passing of the Act. Claim for compensation dismissed on the ground that no tenancy existed at the time of the passing of the Act.—Q. S., Leahy v. Ellis, 6 Ir. L. T. 18.

In the absence of a claim for improvements, the Court will, in estimating the amount of compensation for disturbance, take into account the fact of the tenant having improved the holding.

Capricious eviction is a ground for awarding the maximum claims.—Q. S., Forsyth v. Darby, 5 Ir. L. T. 35.

Principles of estimating amount considered.—Q. S., Darragh v. Murdoch, Q. S., 5 Ir. L. T. 38, and Boyd v. Graham, ib. 102.

Cross claim by landlord, in respect of deterioration of the holding allowed. Where the tenant, after notice to quit, breaks up land and takes a white crop off it, compensation will be largely diminished.—Q. S., Kehoe v. Croker, 5 Ir. L. T. 56.

Where the tenant has permitted waste upon his holding, no compensation for disturbance will be allowed.—Q. S., Damery v. O'Callaghan, 5 Ir. L. T. 56.

The amount of compensation for disturbance is in the discretion of the Court, which will take into consideration the existence of negotiations for the surrender of a portion of the holding, and the fact that the tenant does not reside on the holding.—Q. S., O'Brien v. Rae, 5 Ir. L. T. 86.

Amount diminished where the claimant did not reside on the holding in question.—Q. E., Connolly v. Hemphill, 5 Ir. L. T. 144.

The maximum amount will not be allowed as compensation for disturbance where the claimant has not resided upon the holding.—Q. S., Maguire v. Clinton, 6 Ir. L. T. 38.

Maximum not awarded where claimant had another home and farm, and did not reside on the holding claimed for.—Q. S., Connolly v. Hemphill, 5 Ir. L. T. 144.

Incoming payments, with the consent of landlord, will favourably affect the claim for compensation.—Q. S., Doran v. Cummins, 5 Ir. L. T. 145.

As a general rule, the scale of compensation for disturbance provided by the Act is fair and reasonable, particularly where regard is had to the large sum which lands bring when sold subject to the Ulster custom.—Q. S., Morrow v. Devling, 6 Ir. L. T. 36.

An improving tenant is entitled to the maximum compensation for disturbance of his class in the scale.—McCullagh v. Weir, 5 Ir. L. T. 115.

A tenant of a small holding suffers more from dispossession, and is entitled to a greater number of years' rent, than a larger

tenant, who gets considerable compensation.—Q. S., M'Coey v. Renaghan, 6 Ir. L. T. 37.

The third section is borrowed from the good-will element of the Ulster custom. A non-improving tenant, only fourteen years in occupation, ten of them under a lease, and the rent, which was a high rent, unchanged, is entitled to compensation for disturbance (three years' rent).—Q. S., Devine v. Huey, 5 Ir. L. T. 115.

Where the tenant had lived on the holding for several years, and paid his rent punctually, the change in his position in life and in his family arrangements, caused by the resumption of possession, is a just ground for making the landlord pay a high rate of compensation for disturbance.—Q. S., Mawlinney v. Macoun, 6 Ir. L. T. 17.

Section IV.

COMPENSATION FOR IMPROVEMENTS.

(See Compensation for Disturbance, p. cvi.)

What claims excluded.—See Predecessor in title, p. cix.

Whether, when made by a previous tenant, they can be claimed for.—See Predecessor in title, p. cix.

The improvements must be suitable to the holding, and calculated to add to its letting value. Claim for unnecessary farm buildings disallowed.—Q. S., Robertson v. Bruce, 5 Ir. L. T. 54.

A covenant in a lease to deliver up to the landlord all buildings and improvements on the lands at the termination of the demise, does not prevent the tenant from claiming compensation for those improvements under sec. 4.—Q. S., Hill v. Lord Antrim, 5 Ir. L. T. 57.

Compensation refused for buildings attached to the house, but for the accommodation of the tenant's sons, and which did not add to the letting value of the holding. Also for an additional but unnecessary road.—Q. S., May v. Wallace, 5 Ir. L. T. 101.

"Waste land" is used in the Act in a popular, not a strict, sense.—Q. S., Adams v. Jones, 5 Ir. L. T. 74.

Compensation for improvements will be allowed where they were suitable, and the holding as let for agricultural purposes, though the landlord might now consider it more beneficial to him if they had not been made.—Q. S., McComisky v. Carter, 6 Ir. L. T. 15.

The value of turf cut in the process of reclamation is not a set-off, but may be regarded in determining the cost of the improvements.—Q. S., Halfpenny v. Carter, 6 Ir. L. T. 17.

Section VI.

REGISTRY OF IMPROVEMENTS.

What should be registered under section 6 are the specific improvements, proved to have been executed by the landlord or the tenant, and not their original cost, or their value at the time of the registry.

The tenant has a right to have all the improvements made by himself or his predecessors in title specified in the schedule, although he may not be entitled to compensation in respect of them on quitting his holding.—Q. S., Holt v. Lord Harberton, 5 Ir. L. T. 141. Affirmed by Court for Land Cases Reserved.—6 Ir. L. T. 1.

Section XI.

PREDECESSOR IN TITLE.

Where a lease expired in 1867, under which the tenant held his land, and under which his father had held before him, and a new agreement was entered into with the landlord, the tenant cannot claim compensation for improvements executed by his father, the latter not being his "predecessor in title."—Q. S., Darragh v. Murdoch, 5 Ir. L. T. 38. S. C. A., 5 Ir. L. T. 69.

A lease was granted to the father of the claimant, who, previously to the date thereof had been a tenant, and had made extensive improvements. The new lease included other lands, and was made at a reduced rent. Held that "predecessors in title" did not include the persons who held previous to the grant of the new lease. Therefore the claimant was not entitled under sec. 6, to register improvements made by the lessee prior to the new lease.—Q. S., Holt v. Lord Harberton, 5 Ir. L. T. 141. S. C. Court for Land Cases Reserved.—6 Ir. L. T. 1.

Section XV.

DEMESNE LAND.

Sub.-Sec. 1.

A tenant of demesne land can claim compensation for improvements, but not for disturbance.—Construction of proviso to sub-sec. 1 of sec. 15 considered.

The word "demesne" is used in the Act in its ordinary and

popular signification. "Demesne land" is land within the ambit of a demesne, reserved with the mansion-house, and used for purposes of pleasure, or for pasture, or sometimes let to dairymen, or let during the minority of an owner.—A., Hill v. Earl of Antrim, 5 Ir. L. T. 70.

TOWN PARKS.

Sub.-Sec. 1.

It is not necessary to constitute "town parks" that the town should have Commissioners, or be corporate, or have suburbs.—Q. S., Corbett v. Carey, 5 Ir. L. T. 15.

Land let to a brewer, living in a neighbouring town, for the accommodation of his horses, is a "town park," irrespective of the amount of rent or the extent of the holding.—Q. S., Saul v. Keown, 5 Ir. L. T. 35.

Proximity to a town, high rent, and the fact of the tenant living in the town, are not conclusive as to a holding being a "town park."—Q. S., Forsythe v. Darby, 5 Ir. L. T. 35.

Forsythe v. Darby followed.—Q. S., Adams v. Jones, 5 Ir. L. T. 74.

To constitute a "town park" within the meaning of the Act, the land must have been ordinarily so termed, must adjoin a town or city, have increased value as accommodation land, and be in the occupation of a person living in the city or town.—Q. S., Boyd v. Graham, 5 Ir. L. T. 102.

The 15th section of the Land Act does not apply to the Ulster custom. Town parks are subject to the Ulster custom.—Q. S., McGaughey v. Stewart, 5 Ir. L. T. 146; and Gallagher v. Lord Leitrim, Ib. 188.

The Ulster tenant-right custom proved to apply to town parks.—Q. S., Weir v. Knox, 6 Ir. L. T. 38.

PASTURE LAND.

Sub.-Sec. 1.

The exception in sec. 15, sub-sec. 1, of holdings "let to be used wholly or mainly for the purpose of pasture," does not apply to a holding which the tenant may farm in whatever way he pleases, although, as a matter of fact, it may be used as a pasture farm.—Q. S., O'Brien v. Rae, 5 Ir. L. T. 86.

LABOURERS' HOLDINGS.

Sub.-Sec. 2.

Holding which the tenant holds, with the option of paying rent

in cash or labour, does not come within the exception in Sec. 15, sub-sec. 2. Q. S., Molony v. Garriby, 5 Ir. L. T. 15.

The mere payment of rent by labour does not bring a claimant within the exception which exempts from compensation "any holdings which the tenant holds by reason of his being a hired labourer."—Martin v. Trodden, 6 Ir. L. T. 37.

TEMPORARY CONVENIENCE.

Sub.-Sec. 4.

An agreement on the expiration of a lease, to hold for one year certain, under which the tenant was allowed to remain in possession, is not a letting for the "temporary convenience" of landlord or tenant.—Q. S., Darragh v. Murdoch, 5 Ir. L. T. 38.

Section XVIII.

EQUITIES BETWEEN LANDLORD AND TENANT.

Where the tenant of a holding subject to the Ulster tenant-right custom has exhausted the lands, the amount awarded may be reduced for such improper conduct.—Q. S., Weir v. Knox, 6 Ir. L. T. 38.

It is unreasonable conduct on the part of a landlord to demand from a tenant security for future rent, and for the good cultivation of his farm, as a condition of allowing him to remain in his holding at a fair rent.—Q. S., M'Chesneys v. Delacherois, 5 Ir. L. T. 36.

Where the landlord offers to pay the tenant's costs, and to continue him upon the same terms as before, if the tenant refuses to accept these terms his claim for disturbance will be disallowed.—Q. S., Kerr v. Steele, 5 Ir. L. T. 37.

The Court is not bound to award to the tenant the maximum amount of compensation, and where the latter has broken a contract entered into in relation to his holding, the amount of compensation for disturbance will be cut down.—Q. S., Sloan v. Thompson, 5 Ir. L. T. 37.

A purchaser in the Landed Estates Court offered the tenants, who had been in possession for periods from seventeen to fifty years, and whose rents had been raised to the full letting value three years previously, leases for fifteen years, at rents increased so as to realise five per cent. on his purchase money. The tenants refused these terms. *Held* that they were entitled to compensation (two years' rent) for disturbance, and to compensation for improvements.—Q. S., Boyd v. Graham, 5 Ir. L. T. 102.

Unreasonable conduct, in the 18th section of the Act, means unreasonable conduct in the relation of landlord and tenant. Therefore, in awarding compensation, the Court should not take into account collateral circumstances, *e.g.*, alleged equitable claims between parties claiming the tenant's interest.—Q. S., Williamson v. Pakenham, 5 Ir. L. T. 118.

Sections XL. and XLV.

SALES TO TENANTS.

The Court has no jurisdiction to carry out an agreement for sale, between the landlord and the tenant, of a portion of land comprised in a fee-farm grant, indemnified by the remainder of the lands against the rent reserved by the grant.—(L. E. Ct.), Sir C. Domville's estate, 6 Ir. L. T. 62.

The forfeiture of a tenant's holding to the Board of Works, under sec. 45, operates not only on the tenant's interest, but on the absolute interest in the lands, including the interest of an annuitant, subject to whose annuity the tenant purchased them.

Where, however, the Court is of opinion that the annuitant is practically secure, it will not, on that account, refuse to sanction a sale.—(L. E. Ct.), Pennefather's estate, 6 Ir. L. T. 61.

Sections LVII. and LVIII.

NOTICES TO QUIT.

Notices to quit must not only be stamped as provided by sec. 57, but it must be proved either that the stamped notice was served on the tenant, or shown to the tenant at the time of service.—Q. S., Beauclerk v. Johnston, 6 Ir. L. T. 18.

A notice to quit served on the 26th of October, 1870, to determine a tenancy from year to year (which commenced on the 1st May, 1869), required the tenant to give up possession on the 1st of May, 1871, "provided the tenancy originally commenced on the 1st of May, or otherwise at the end of the year of the tenancy, which should expire next after the end of half a year from the date of the notice," and in January, 1872, the plaintiff brought an ejectment for the lands, claiming title from the 2nd of May, 1871—held by Morris and Lawson, JJ. (*diss.* Monahan, C.J.) that the notice was effectual to determine the tenancy on the 1st of November, 1871.—Lord Ashtown v. Larke, Ir. R. 6, C. L. 270.

Section LIX.

PERSONAL REPRESENTATIVE.

A claim for £600 under the Land Act having been filed by the administrator, with will annexed of a deceased tenant, and letters of administration, stamped as of £100 value, having been offered in evidence. *Held* that the case could not be entertained until the letters of administration were properly stamped, and that sec. 59 did not apply to the case.—Q. S., M'Creanor v. Heron, 6 Ir. L. T. 63.

Limited administration under sec. 59 will not be granted except in the case of claims of small amount.—Q. S., Murray v. McKimmen, 5 Ir. L. T. 116.

Section LXXI.

AGRICULTURAL OR PASTORAL HOLDING.

A holding in the suburbs of a town, which derives its value from a villa residence built upon it, is not agricultural or pastoral, or partly agricultural and partly pastoral, and therefore is not a holding for which the tenant is entitled to compensation.—Q. S., Hay v. Cooke, 5 Ir. L. T. 145.

Where separate rent-receipts were given in respect of house and lands, the house being in a village, it is outside the Act.—Gallagher v. Lord Leitrim, 5 Ir. L. T. 188.

PRACTICE.

(See Ulster T. R. Custom, p. civ.)

Counsel will be heard in the Court for Land Cases Reserved in the order in which they are heard in the Court of Exchequer Chamber.—Holt v. Lord Harberton, 6 Ir. L. T. 1.

Rules 9 and 12.

A tenant cannot rely upon the non-expiration of the calendar month between the service of notice of his claim, and the first day of the land session; no objection being made on the part of the landlord to the irregularity.—Q. S., Meerely v. Stackpoole, 5 Ir. L. T. 15.

Rule 13.

Where the tenant has not complied with the rule requiring one week's notice to be given of setting down the cause for hear-

ing, the landlord's time for serving notice of dispute will be extended.—Q. S., Carroll v. Doyle, 5 Ir. L. T. 54.

Rule 26.

The Court cannot give any other fees than those comprised in the schedule for any proceedings in the course of the claim and dispute except witnesses' expenses and costs of making maps, surveys, and copies of documents for the use of the Court.— Q. S., Stewart v. Hart, 6 Ir. L. T. 36.

A claimant may appeal from a decree of the Land Court in his own favour.—A., Hill v. Earl of Antrim, 5 Ir. L. T. 70.

A tenant must state whether he will claim under sec. 3 or sec. 7.—Q. S., Talbot v. Drapes, 5 Ir. L. T. 143.

A claimant having a dual claim need not elect to rely on one claim. He must first proceed on one claim, but, if he fails in proving it, he may fall back upon the other.—Q. S., Doran v. Cummins, 5 Ir. L. T. 145.

When the proof of holding being subject to the Ulster tenant-right custom failed, leave was given to file a claim under the other sections of Land Act.—Q. S., Allison v. Mansfield, 5 Ir. L. T. 37.

INDEX OF CASES.

INDEX.

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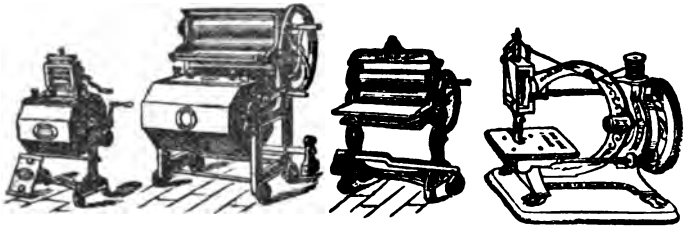

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